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Supreme Court, U.S.
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No. _____

In The
SUPREME COURT of the UNITED STATES

BRUCE EDWARDS,
Petitioner-Appellant-Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Respondent-Appellee-Defendant.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

BRUCE EDWARDS
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(non-published, home)

QUESTIONS PRESENTED

Under the Higher Education Act of 1965 (HEA), as amended, the U.S. Department of Education (EDUC) acts, *inter alia,* as guarantor for various student aid programs; but, with weaknesses in its financial management and information systems. It has not received an unqualified—or "clean"—opinion on its financial statements since its first agencywide audit in 1995. (GAO-03-99 p. 11; 1/2003)

Under the Treasury Offset Program (TOP), on 9/22/00 EDUC offset petitioner's tax refund for a *Bank of America* (BoA) 'loan' and '4/15/87 default,' purportedly paid 4/16/87 by the California Student Aid Commission (CSAC); based solely on a 1985 *First Independent Trust* promissory note. But, petitioner withdrew without receiving a loan—and neither agency has *any* loan records from *either* lender.

However, the Tenth Circuit deemed 28 U.S.C. § 636(c) judgment of remand for the ensuing suit to be 'not final,' and therefore unappealable; so judicial review, of both the magistrate judge's judgment and agency action, is denied.

1. Was circuit court dismissal of 28 U.S.C. § 636(c)(3) appeals, on an administrative remand rule *not to be applied if it would violate basic judicial principles*, erroneous; as the magisterial 'unappealable remand' ignored 9/22/00 tax refund offset *was taken* for a 'loan' when "there is no evidence that the loan was funded?"
2. Does Magistrate Act consent allow *appellate* exercise, or was magisterial "review" of pretrial filings—over objections and requests for reassignment *if* the case was an 'appeal'—error; usurping Circuit Chief Judges' power to designate *district judges* for appeals?
3. On the whole hybrid trial-'appeal' proceedings record (for entry of judgment exercising 28 U.S.C. § 636(c) jurisdiction); did the magistrate judge commit harmful errors in making—or omitting—evidentiary rulings, findings of fact and conclusions of law?
4. Was the EDUC 9/22/00 offset 'debt' collection, or did the agency violate petitioner's due process rights?

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ORDERS AND OPINIONS BELOW

None of the orders and opinions below was reported: The notice of 9/22/00 FMS offset ordered by EDUC is reproduced at Pet. App. 94.

The order entered under 28 U.S.C. § 636(c) is rendered at Pet. App. 1; ensuing district court judgment at *id.* 96; and subsequent denial of costs at *id.* 96.

Circuit court dismissal is set forth at Pet. App. 98.

COURT JURISDICTION

EDUC recorded 9/22/00 Treasury Offset Program (TOP) tax offset on 10/2/00; the district court entered 28 U.S.C. § 636(c) judgment on 10/22/03, and denial of costs on 11/3/03; and the circuit court entered dismissal, based on an administrative remand (non-final) rule, on 8/5/04.

The district court denied reconsideration of costs on 11/24/03, and the motion to open/alter, or for relief from, judgment on 12/8/03; the circuit court denied the petition for rehearing/rehearing *en banc* on 9/20/04.

28 U.S.C. § 1254(1) confers jurisdiction on this Court to review this case in the Tenth Circuit Court (that had § 1291 jurisdiction upon entry of § 636(c) judgment below).

CONSTITUTIONAL PROVISIONS, STATUTES & REGULATIONS

The following are on the Petition Appendix (Pet. App.) pages indicated: Constitution of the United States Article III Section 2, p. 99; and the Fifth Amendment, p. 100.

28 U.S.C. § 636(c), p. 117; and Appendix, Fed. R. Civ. P. Rule 73/(a),(c) 1983 Advisory Committee Notes, p. 119.

5 U.S.C. § 552a, in part, p. 103.

Financial Management Service (FMS) Treasury Offset Program (TOP) authority:[1] 26 U.S.C. § 6402(d), p. 116;

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[1] Identified by FMS Debt Management Services; *see* http://fms.treas.gov/debt/regulations_quickref.html

31 U.S.C. § 3720A, p. 122; 31 C.F.R. § 285.2, p. 125; and also 34 C.F.R. § 30.33, p. 131.

34 C.F.R. § 682.401(b)(6) *[1984-85 ver., p. 491],* p. 132; amended by Student Financial Assistance Amendments of 1985, Pub. L. 99-272 4/27/86 100 Stat. 339 § 16012(a) (3), effective 1/1/86 (100 Stat. 356 § 16041(b)), p. 100.

42 U.S.C. § 1981, p. 124; other pertinent provisions may be identified and set forth in the appendix hereto.

CASE STATEMENT

OVERVIEW

As this case stands, there are two times the express terms of apparently-legal written agreements don't count.

One is if officers of the court of the United States government choose to circumvent or dishonor them. *I.e.,* following written party consent regarding jurisdiction:

a. the magistrate judge entered a remand after his appellate review, rather than trial, of the matter;
b. despite the parties' related agreement, government counsel moved to dismiss appeal of the judgment;
c. a circuit motions panel overruled 28 U.S.C. § 636(c) appeal by an administrative remand rule dismissal;
d. the pre-agreed judicial review was thus cancelled.

The other is when a United States government agency ignores the details of a loan contract, and "maintains" the related record so it is difficult to understand. *E.g.,* based solely on a 1985 First Independent Trust pre-loan note:

a. the Department of Education accepted it for a claim of a Bank of America loan and its 1987 default;
b. EDUC pursued a claim against me for the unconsummated note without any lender documents;
c. first offering review in 1997, the Hearings Branch would only consider *discharge* of a post-1/86 loan;
d. tax refund offset was taken 9/20/00 for that claim;
e. after a pretrial process, the agency filed a record for review that failed to *name* the loan/default "lender;"

Thus, judicial review is *only* available through the Court.

PRE-SUIT

In 1985, I participated in enrollment and orientation at a California vocational school, Travel and Trade Career Institute (TTCI); where I signed a First Independent Trust (lender ID #828374) note on 6/17/85, for an advance I was to receive around 7/4/85. Pet. App. 133. I withdrew from TTCI on the first day of class, without receiving the loan check to be endorsed by deposit in my *personal* bank account, as required at that time.[2]

After the California Student Aid Commission (CSAC) 'endorsed' that unconsummated First Independent Trust note (*see* Pet. App. 137); the United States Department of Education (EDUC) accepted its assignment on 5/25/93 for alleged 4/16/87 payment of a claimed 4/15/87 loan default (*id. 412*[3]) for *Bank of America* (BoA), lender ID #801178 (*see id.; and see* 1/23/01 (L109) Debt Level Information Screen at "originating lender," *id.* 456; *see also* EDUC description of L109 "originating lender," *id.* 463).

I was forwarded one demand, in 1993, that I disputed by phone and in writing (which EDUC didn't record); and didn't hear from EDUC again until 1996. (Until 1996, and for TOP notices through 1996, EDUC used what was *known since 1990* to be a "bad address;" according to the CSAC Contact History Report.[4] Pet. App. 445. Counsel cited that report, *i.e.,* in the Answer at #14b (*see* Pet. App. 189), but never filed it; *I* filed it, *i.e.,* at #105 Supp. to AR 153 (*see id.* 445), but it was denied as moot (*see id.* 14)).

Since 1996, from my current address I have requested verification of debt when offered; receiving occasional half-legible copies of the First Independent Trust note (I disputed as unconsummated), and a 1/28/97 EDUC (R109) Account Profile Screen with (R103) Account Transaction Screen as the 'account history.' *See* Pet. App. 445.

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[2] *See* 1984-85 ed. 34 CFR 682.401(b)(6) *set forth at* Pet. App. 132

[3] *And see id. 457* (EDUC explanatory sheet for R107 GSL PROGRAM SPECIFIC SCREEN) at "DATE ENT," "ORGCLMPAYDTE," and "DEFTDTE"

[4] First Independent Trust's lender ID #828374 is not anywhere on this report; BoA's #801178 first appears on it on 3/19/87, *see* Pet. App. 455

Then, before a deadline set by EDUC notice of intent to offset federal payments (Pet. App. 161) with 9/5/97 debt statement (*id.* 166); I filed for a pre-TOP agency review on the Request For Review form (*id.* 459) provided. This was recorded 10/16/97 (*id.*420); then, Ms. Shirley Amey of the Hearings Branch sent a 10/30/97 letter acknowledging its receipt, and soliciting applications for discharge of a "loan made on or after 1/1/86" (*id.* 14), which I declined to sign (*id.* 167; *and see id.* 421 at 04/03/98). I never received a decision or even heard from the Hearings Branch again.

On next receiving *demands* in mid-1998 (*see* Pet. App. 415), I wrote to object (*id.* 169; *cf. id.* 421 at 09/02/98). Ms. Diane Spadoni, of EDUC Debt Collection Service (DCS), replied on 11/12/98, suggesting I 'forgot' the debt, and didn't receive loan funds because schools "frequently" do (*id.* 171); then all collections ceased for almost a year.

Beginning in late 1999, a new agent, Van Ru Credit Corp. ("Van Ru" or "VR"), sent automated demands—my replies to which were never directly answered; although, they were incomprehensibly summarized in the record.[5]

(Van Ru requested my Equifax report on November 4, 1999. *See* Pet. App. 185; no "student loan" was reported.)

I filed complaints about Van Ru (*i.e.,* Pet. App. 177). EDUC recorded the State of Colorado's pursuing the matter (*id.* 423 at 01/12/00), and Van Ru's sending an immediate response (*see id.* 424 at 01/14/00); the cover letter of which was 'Exhibit A' of the Stipulation the State of Colorado copied to me upon resolution. *See id.* 451.

But, that cover letter (Pet. App. 181) had purported to disclose information from the record *prior to* the referral to Van Ru; openly notifying the agency of this by, "Cc: Mary Patterson, U.S. Department of Education, ASC."

Contract Monitor Ms. Patterson recorded recalling the account on 01/27/00 (Pet. App. 425); requesting a copy of

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[5] *Cf.* Pet. App. 173 at 11/11/99 *with id.* 422 at 11/15/99;
cf. id. 174 at 12/10/99 *with id.* 422 at 12/21/99;
cf. id. 176 at 12/17/99 *with id.* 423 at 12/28/99;
cf. id. 178 at 01/21/00 *with id.* 424 at 01/26/00;
and cf. id. 180 at 01/28/00 *with id.* 425 at 02/07/00ss.

the note for the Colorado Attorney General's Office on 03/28/00 (*id.* 425); and faxing it to same on 04/04/00 (*id.* 425). Ms. Patterson made entries on 05/10/00 (*id.* 426), 05/23/00 (*id.* 426), and 06/20/00 (*id.* 426) (note: PCA means private collection agent). Also, Colorado's interim 3/29/00 Letter of Admonition (*id. 447*) was recorded on 04/07/00 (*id.* 426); that entry states both "Frwrd cps to...Mary Patterson" *and* "Brown per prev notes ..did not frwrd cpy to Mary Patterson. NBrown" (*id.* 426).

(Despite these recorded details, in the instant case, counsel asserted, "Defendant lacks sufficient information to admit or deny remaining allegations regarding his Complaint to the Colorado Collection Agency Board and therefore denies," Ans. 34; *set forth at* Pet. App. 192.)

Objections I raised because the claim was not a legally enforceable debt, and due to 31 C.F.R. 5.23(b)(1),[6] were recorded 08/29/00 (Pet. App. 426). On 8/31/00, Ms. Diane Spadoni of EDUC Debt Collection Services again wrote; citing the 9/5/97 notice, she ignored my 10/16/97 review request (*see id.* 420). This letter announced that student loans are exempt from statutes of limitations (by rather old laws that, misleadingly, still aren't reflected in agency regulations, *see, i.e.,* 34 C.F.R. 30.20(b)(4), rev. 7/1/04), and stated the account will be 'removed' from the TOP when the 'debt' is satisfied (*id.* 182).

EDUC first added my account to TOP in the 2000 process year, when the alleged 'principal and interest' were $5,169.94—a TOP figure that remains constant and is not changed by subsequent credits and debits—as 'recertified' from previous 65-day TOP notice (9/5/97 being the only such notice I ever received). My 1999 tax refund of $234.32 was offset on 9/22/00 and processed 10/2/00. *See* 1/23/01 (I100) Federal Offset Account Screen, Pet. App. 458; and the related explanatory pages (*id.* 464).

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[6] "(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and: (1) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than ten years at the time the offset is made;" 31 C.F.R. 5.23 (rev. 7/1/00)

SUIT

With its 9/5/97 Debt Statement, EDUC notice advised, "If you disagree with this decision and your Federal payment is offset, you may have this decision reviewed by bringing a lawsuit in Federal district court." Pet. App. 165. FMS notice of 9/22/00 offset (*id.* 94) *conveyed* a Hearings Branch decision. I filed suit January 8, 2001, asserting Colorado District Court jurisdiction "founded on questions regarding Department of Education implementation of statutory requirements, regulations, and code, as cited in this Complaint" (*id.* 143) (*re* 28 U.S.C. § 1331); describing the situation from my perspective; identifying the relief sought (*id.* ¶4, 5, 29, and 39-42); and submitting exhibits. *See id.*, in general.

Specifying 5 U.S.C. § 704 (actions reviewable), at ¶2 the complaint also pled for judicial review upon 9/22/00 offset. At ¶3 I raised the lack of required *determination*, inherent in the 31 U.S.C. § 3701(b) definition of "claim" or "debt," and I formally stated I was not made a loan. *Id.*

District court jurisdiction engaged by the complaint included, at least, 5 U.S.C. § 552a(g); 28 U.S.C. § 1346(a) and § 1361; and, possibly (as the postal service was used for 'collections') § 1339—as well as 42 U.S.C. § 1988(a) (with respect to § 1981 rights being implicated by the post-1992 EDUC allegation of a loan 'contract').

Neither district court nor EDUC counsel limited the issues to evidence the agency placed in its claim file. The matter was assigned as a trial, not as an "AP" appeal.[7] The district court gave 60 days for an answer,[8] requiring the summons include papers on magisterial jurisdiction. *See* affidavit, *id.*186; *cf.* Fed. R. App. P. Rule 15(c).

Counsel filed the Answer 3/19/01; but *not* the record within 40 days of service,[9] to validate its ¶2 "Defendant admits jurisdiction only for judicial review under the Administrative Procedure Act." *Id.* 187 (*cf.* ¶2, *id.* 143).

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[7] *Cf.* D.C.COLO.LCivR 40.1 *at* A & B *with same at* D

[8] *See* Fed. R. Civ. P. Rule 12(a)(3)(A)

[9] *Cf.* Fed. R. App. P. Rule 17

Consensual magisterial trial process

A proposed trial scheduling order (Pet. App. 17) and consent to the jurisdiction of a magistrate judge (*id.* 193) were signed (*pro se* on 4/29/01; and by counsel on 5/2/01); then, the case was referred under 28 U.S.C. § 636(c) by the randomly-assigned (chief) district judge (*id.* 16).

That scheduling order, at Sec. 5 (Pet. App. 18), shows Fed. R. Civ. P. Rule 26(a) exchanges were made (EDUC's labeled, *i.e.,* {US000089}); and, at the conference, counsel had "no issues" (*id.* 48 at 8:25) with my disclosures list.

Conversely, when asked about any problems, I raised having asked for a copy of the loan check or electronic funds transfer; but the court accepted counsel's assertion this was a discovery, not a disclosure, issue. Pet. App. 46 at 6:11-25. Counsel assured the court that the disbursal evidence would be provided without a formal request—or at least a search for it would be caused. *Id.* 48 at 8:9-20.

The absence of any showing the lender actually made the loan was also raised as in impediment to amending the complaint, based on purported third-party records only recently "disclosed" at all; so the court advised that that deadline could be extended. Pet. App. 51 at 13:3-22.

On the 10/1/01 dispositive motion deadline, I mailed a motion for enlargement of period for dispositive motions, entered 10/3/01 (Pet. App. 251); since, *i.e.,* an *inches thick* stack of EDUC production was sent only 12 days earlier.

That day, I also moved for production of complete and legible documents presented as Defendant's Rule 26(a)(1)(B)A & B exhibits (entered 10/3/01; *see* Pet. App. 247); seeking usable papers from the interested third-parties (school (TTCI) and state guarantor (CSAC), each having apparently collected funds against the alleged 'loan'), "including such supporting documents as reasonably necessary to understand their contents or as should, in fairness to Plaintiff, be produced to demonstrate them as relevant, genuine and timely for the purpose of supporting the EDUC claim or addressing Plaintiff's Complaint for which they were introduced..." *Id.* 250.

On the 10/1/01 deadline, counsel filed a dispositive motion (Pet. App. 195) and supporting brief with exhibits (*id.* 196) that were mostly versions of "initial" disclosures, including the illegible and incomplete third-party items.

The court denied extension of the dispositive motions deadline for lack of certificate of conference with opposing counsel (Pet. App. 255). Minute orders required my response to the dispositive motion by October 15 (ordered and mailed October 2, giving counsel 10 days for a reply); ordered counsel's response to my motion to compel; and set an 11/19/01 hearing about that motion.

Meanwhile, I moved to enlarge my response time (Pet. App. 253, 278). And, pursuant to Fed. R. Civ. P. 12(f), I first filed motions to strike (*id* 256, 259, 263, 270, 274) the dispositive motion brief's unauthenticated 'exhibits' of alleged school "records" *from initial disclosures,* including their covering Exhibit 2 Declaration of Glenda Rasca ("Rasca Decl."). Pursuant to the same rule, I also first moved to strike, and to limit agency use of, (*id.* 279, 295) unsupported material from initial disclosures submitted under the Exhibit 1 Declaration of Nicolas Navarro ("Navarro Decl."). Detailing objections under rules of evidence and procedure, these *pre-response* motions to strike (especially the latter two) exhaustively set forth related discovery; but, were taken as "inappropriate" multiple *responses* to the dispositive motion. Eventually, all these motions were denied together, and a new dispositive response deadline was set (*id.* 22): 11/20/01.

Counsel filed the response about the *initial disclosures* (Pet. App. 325); in which ¶1a identifies a loan application also filed as the Navarro Decl. exhibit A, (*cf. id.* 222), ¶1b describes the same items as Rasca Decl. exhibits B, C, and D (*cf. id.* 237, 238, 239), ¶1c correlates to Rasca Decl. exhibit A (*cf. id.* 233); and ¶1d is also the CSAC record *referred to* in the Answer (at ¶14b, *id.* 189) and Navarro Decl. (in ¶18, *id.* 218), but never *filed* by counsel. So, the outcome of the 11/19/01 hearing (transcript *set forth at id.* 60) about these documents seemed predetermined; given the dispositive motion response deadline of 11/20/01.

I filed the dispositive motion response on 11/20/01 (Pet. App. 327); and counsel didn't reply in the allotted 10 days to object to any disclosures and/or discovery it contained.

After the 1/9/02 pretrial conference (*transcript set forth at* Pet. App. 69), proposed trial exhibits were to be exchanged and timely objected to (*see id.* 397), while the pretrial order was revised (entered 2/1/02, *id.* 25); the only pending issue being the dispositive motion and response.

Imposed magisterial appeal exercise

Without a Rule 56(d) hearing and determinations, Magistrate Judge Boland next *sua sponte* vacated the trial (to "avoid" *using the dispositive motion*), intending to conduct an 'appeal' instead (Pet. App. 36); and then denied (*id.* 38.) my filing for Fed. R. Civ. P. 72(a) district judge review of that 3/6/02 order. This denial referred to 28 U.S.C. § 636(c)(3) *circuit* appeal, and to "final" orders.

Perceiving the nature of my dilemma as procedural, rather than jurisdictional, on 4/5/02 the assigned district court (chief) judge declined (Pet. App. 39) to vacate his reference; observing that 28 U.S.C. § 636(c) and local rule afford a remedy of appellate review. (Signed the day before, this denial was filed the same day as my *within-24-hours* reply (*id.* 408) to counsel's misleading response.)

After a 4/22/02 conference (*transcript set forth* at Pet. App. 79), Magistrate Judge Boland set a schedule, permitting EDUC to "designate"/file a record. With no notice, this order further denied the dispositive motion without prejudice *and specifically allowed its use. Id.* 40.

My motions under local rule 40.1E (now 40.1D), for handling on the district's *appeal* docket, were denied (Pet. App. 41). An "administrative record" was filed on 5/15/02 (*id.* 397), over 440 days after service of the complaint; on 6/7/02, I filed objections (*id.* 429) and a supplement/index (*id.* 436)—to which counsel filed objections, mostly about disclosure dates (*id.* 468). Then, without any reference to the content of my opening brief (*id.* 470), counsel *used the dispositive motion brief* (*id.* 196) for the bulk of a so-called 'response' (*id. 508*; underlined at its verbatim repetitions).

After over a year, the magistrate judge (denying all of the supplement/objections as "moot," and considering the Navarro Decl., incorporated to help explain the "record"); ordered administrative remand on 10/21/03 (*id.* 1); which terminated the case, when the district court judgment was entered 10/22/03 (*id.* 96). My 10/30/03 request for action regarding costs resulted in their denial (*id.* 96). I filed notice of appeal and the transcripts order, fully prepaying all related fees on 11/20/03.

After the magistrate judge flatly denied my 11/5/03 motion to open/alter, or for relief from, judgment, and my 11/12/03 objections to the denial of costs (taken as a motion for reconsideration) (*see* Pet. App. 93 *and* 92, respectively); I filed amended notice of appeal by 12/16/03.

CIRCUIT APPEAL ON ENTRY OF JUDGMENT

In the circuit court, I was required to file an opening brief by 2/9/04 at peril of dismissal, although the transcripts (with some material errors) weren't filed until January 12; but counsel's response was suspended by the agency's motion to dismiss. On 8/5/04, a motions panel denied all my outstanding motions, dismissed my 28 U.S.C. § 636(c)(3) appeal under an administrative remand rule, and ordered the mandate forthwith (Pet. App. 98).

The dismissal order asserted the magistrate judge's judgment was not a final, appealable decision under 28 U.S.C. § 1291 or any recognized exception to it (despite noting the parties had filed 28 U.S.C. § 636(c) consent).

The motions panel summarily denied my request for a mandate recall and stay on 9/8/04 (Pet. App. 92); and my petition for rehearing and rehearing en banc (no active judge requested a poll) on 9/20/04 (Pet. App. 94).

Now, the Court is my only hope for judicial review, either as described in 28 U.S.C. § 636(c)(3) for judgment entered by the magistrate judge, *or* as guaranteed by the Administrative Procedure Act for the final agency action of 9/22/00 offset (as threatened *administrative* measures to "collect" the unproved "debt" will require another suit.)

ARGUMENT

DENYING 28 U.S.C. § 636(c)(3) APPEAL IS ERR

Submitting to the jurisdiction of a magistrate judge was not my idea. After having to serve the instructions and forms the clerk provided with the summons (*i.e.*, D.C.COLO.LCivR 72.2C), I had to reconsider not having signed them later, during trial scheduling preparation.

Because this is not a case on the order of the Oklahoma City bombing, *and because I could appeal the judgment if aggrieved by it,* I agreed at that time; *as did counsel for the United States Department of Education* (*see* scheduling order at 6.a.; Pet. App. 19).

Knowing the "Defendant admits jurisdiction only for judicial review under the Administrative Procedure Act," (Ans. 2, *id.*187), counsel certainly had as much right as I *not to consent to an appealable judgment;* and thus take advantage of the non-finality of any remand *if entered by a district court judge.*

But, the provisions of 28 U.S.C. § 636(c), including subsection (3) leave to appeal, expressly apply statutorily "[n]otwithstanding any provision of law to the contrary" (and "any" includes administrative remand or other non-finality rules; because it does not explicitly *exclude* them).

Appeal was not just privately endorsed by the parties' signatures; when Magistrate Judge Boland denied district judge review of abandoning the trial, he also wrote:

> Where a magistrate judge is proceeding under consent jurisdiction, review is directly to the appropriate circuit court of appeals. 28 U.S.C. § 636(c)(3). [Pet. App. 38]

Likewise, in denying my 28 U.S.C. § 636(c)(4) motion, Chief Judge Babcock also ratified the leave to appeal:

> Of course, 28 U.S.C. 636 and this court's local rule affords plaintiff a remedy of appellate review. [*Id.* 39]

Thus, *all the district court participants* anticipated that I would appeal on those issues I preserved by my filings during the magisterial proceedings.

Consent was *in accordance with* D.C.COLO.LR 72.6 (now LCivR 72.3), and Fed. R. Civ. P. 73; Congress' intent that magisterial judgments be subject to appeal is stated in the 1983 Advisory Committee Notes for subdivision (a):

> ...In view of 28 U.S.C. § 636(c)(1) and this rule, it is unnecessary to amend Rule 58 to provide that *the decision of a magistrate is* a "decision by the court" for the purposes of that rule and *a "final decision of the district court" for purposes of 28 U.S.C. § 1291 governing appeals.* [Emphasis added.]

That definitively contradicts the motions panel finding *this* 28 U.S.C. § 636(c) judgment is "not a final, appealable decision under 28 U.S.C. § 1291." Pet. App. 98.

The panel's assertion is also at odds with the Court; according to *Roell v. Withrow,* 538 U.S. ___ (2003):[10]

> A judgment entered by "a magistrate judge designated to exercise civil jurisdiction under [§636(c)(1)]" is to be treated as a final judgment of the district court, appealable 'in the same manner as an appeal from any other judgment of a district court.' §636(c)(3).

This is not a very recent Court precedent; according to *Gomez v. United States,* 490 U.S. 858, 870 (1989):

> As before, however, a magistrate's trial jurisdiction can be exercised only upon special designation by the district court, 93 Stat. 643, 28 U.S.C. 636(c)(1); 93 Stat. 645, 18 U.S.C. 3401(a), and it remains subject to judicial review. [Footnote/citations omitted.]

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[10] No. 02–69, slip op. at 4 (4/29/03) (omits footnote) available at http://www.supremecourtus.gov/opinions/02pdf/02-69.pdf

To even request dismissal of appeal was an attempt to breach the parties' agreement on counsel's part; and to grant that request was unconstitutional, because it allowed the government to break the promise of Article III supervision *after it was too late* to withhold my consent if that would waive my constitutional rights to that degree.

It seems more than a little hypocritical that the 9/22/00 offset is undisturbed, like some scarlet letter for "defaulter," while the agency gets to create a record[11] after the fact—when some officers of the courts below have no compunction about defaulting on the appeal provided by the terms of consent.

It also defies the concept of "fair play" to give the subject of potential judicial review a secret means for avoiding higher authority: doesn't it seem to anyone else like a rather obvious "out," if a magistrate judge can exempt his decisions from appeal simply by entering a "nonfinal order" as his judgment?

Finally, aside from enforcing the consent agreement; the *nature* of this particular judgment obliged the panel "to ensure that the court of appeals was able to review an important legal question which the remand made effectively unreviewable:"[12] is it *ever* a valid expression of jurisdiction when a *magistrate* judge opens by claiming, "This matter is before me on an administrative appeal..." (Pet. App. 1)?

MAGISTRATE ACT DOES NOT CONFER APPELLATE POWER

> The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the

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[11] *See* 10/21/03 Order for judgment at Pet. App. p. 13

[12] *Baca-Prieto v. Guigni*, 95 F.3d 1006, 1009 (10th Cir. 1996) (quoting *Travelstead v. Derwinski*, 978 F.2d 1244, 1248 (Fed. Cir. 1992)

> Federal Rules of *Civil* Procedure. 28 U.S.C. § 636(c)(3). [Emphasis added.]

Other than incorporation as "the same manner as an appeal from any other judgment of a district court" when "an aggrieved party may appeal...from the judgment of the magistrate judge" (*id.*), the Federal Rules of *Appellate* Procedure are not implicated in magisterial jurisdiction.

Only the chief judge of a circuit, "may designate and assign one or more *district* judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires," 28 U.S.C. § 292(a). [Emphasis added.]

So, Magistrate Judge Boland's *self-designation* to hear the case as an appeal on 3/6/02,[13] then gratuitously return the matter to the agency—by usurping the power of duly designated *district* judges, because a "reviewing court has discretion to supplement the record or to remand the case to the agency for further proceedings"[14] —was...

> "the encroachment or aggrandizement of one branch at the expense of the other." ...To the extent that this structural principle is implicated in a given case, the parties cannot by consent cure the constitutional difficulty for the same reason that the parties by consent cannot confer on federal courts subject-matter jurisdiction beyond the limitations imposed by Article III, 2. ...When these Article III limitations are at issue, notions of consent and waiver cannot be dispositive because the limitations serve institutional interests that the parties cannot be expected to protect. *Commodity Futures Trading Comm'n v. Schor,* 478 U.S. 833, 851 (1986) [Citations omitted.]

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[13] *See* Pet. App. 36

[14] *Id.* at 13, 10/21/02 Order (citing *Olenhouse v. Commodity Credit Corp.* 42 F3.d 1560, 1575 (10th Cir. 1994)

It stands to reason, also, that a circuit panel cannot usurp its chief judge's authority to designate lower court judges' appellate power, and rubber-stamp (by summarily dismissing appeal of) a magisterial judgment ostensibly entered under the Federal Rules of Appellate Procedure.

The only disagreement in the Court, over whether consent can affect the legality of an undesignated *district* judge sitting on a court of appeals, appears to hinge on whether the aggrieved party preserved the issue by filing timely objections. *See Nguyen v. United States,* 539 U. S. ___ (2003), opinion and dissent.[15]

In this instance, three orders prove I objected upon 3/6/02 trial vacatur: the 3/15/02 denial[16] of district judge review of that order (under Fed. R. Civ. P. 72(a), as proposed non-trial proceedings were outside the terms of referral); the 4/5/02 denial[17] of my 28 U.S.C. § 636(c)(4) motion (since I perceived the Rules swap as good cause to vacate referrals); and the 5/15/02 denial[18] of two motions, regarding intervention or reassignment with respect to the district court's appeal docket.

(Within 24 hours of counsel's response to my 28 U.S.C. § 636(c)(4) motion, I filed a reply,[19] pointing out his "Fact" #3 asserted "A review of the docket for this case indicates that the Plaintiff never filed a response [to Defendant's October 2, 2001 motion for summary judgment * * *]," *after* he was served copies of my two motions to extend the response deadline, seven motions to strike particular dispositive motion exhibits, *and my response* by the reset 11/20/01 deadline.[20] But, the chief judge's order was dated the same day I was served counsel's response; the denial and my reply were filed on the same date.)

Thus, a unanimous Court might *hear* my objections.

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[15] S. Ct. No. 01–10873 (6/9/03) *available at* http://www.supremecourtus.gov/opinions/02pdf/01-10873.pdf

[16] Pet. App. 38

[17] *Id.* 39

[18] *Id.* 41

[19] *Id.* 408

[20] *See id.* 253, 256, 259, 264, 270, 274, 278, 279, 295 *and 327*

Further, the contorted procedural posture of the entire district court case raises the question of whether defense counsel, after "admitting" only APA jurisdiction (Ans. 2, Pet. App. 187), *chose* to ignore a related duty to file the record within 40 days of service *because* the agency could gather the minutest details about what was insupportable in its claim by letting the pretrial process run its course.

Then, trial jurisdiction encompassing more than just what was in the agency "record" could be contended, Pretrial Order 9c (Pet. App. 34). Here, after Magistrate Judge Boland told me if there was any problem with the revised pretrial order, "I'll call you in and we'll take it up. Otherwise, I'll review it and if it seems okay to me, I'll sign it without the necessity of a further conference;"[21] he signed it—and immediately next vacated the trial to limit the jurisdiction exercised (*id.* 36), as counsel wanted.

After that, it seemed an easy matter to force a remand—by the filing of "true copies of the Department's Administrative Record compiled for use in the above-captioned case " (*id.* 410)—in a state described as follows:

> The DOE has taken a very narrow view of the issues presented in this appeal. Consequently, in response to my order directing the DOE to designate the Administrative Record, the DOE submitted only a copy of Ms. Spadoni's letter,[22] a copy of the promissory note,[23] and numerous computer printouts.[24] Notice of Filing Administrative Record, filed May 15, 2002. None of these items are helpful in reviewing the actions complained of by Mr. Edwards... [10/23/01 Order, Pet. App. 9] [Footnotes inserted.]

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[21] *See* Transcr. 1/9/02 pretrial conference at 14:15-18; Pet. App. 78

[22] "The DOE's attempt to limit my review of this case to the issues addressed in Ms. Spadoni's letter is unpersuasive." (Pet. App. 8)

[23] "The copy of the promissory note is, in large part, illegible" (*Id.* 10)

[24] "The printouts are so heavily abbreviated as to render them essentially unintelligible." (*Id.* 10)

Once *remand* was achieved, government counsel was able to convince a circuit panel to concentrate on that aspect of the district court judgment—and overlook the fact magisterial authority *is not beyond judicial review.*

This runs counter to the Court's faith that consent...

> ...checks the risk of gamesmanship by depriving parties of the luxury of waiting for the outcome before denying the *[appealability, in this instance, of the]* magistrate judge's authority. Judicial efficiency is served; the Article III right...honored. [Roell v. Withrow, 538 U.S. ____ (2003)[25] (omits citations) *[bracketed phrase added]*]

In fact, the magistrate judge made it even easier on government counsel, by canceling out the *reason* he gave for vacating the trial ("Tenth Circuit's rationale for prohibiting motions for summary judgment lies in the potential disadvantage to the appellant which could result from allowing the appellee to define the issues on appeal...";[26] Pet. App. 37)—when he denied the agency's dispositive motion "WITHOUT PREJUDICE. The parties are free to raise all of the arguments made in connection with the Motion for Summary Judgment in their briefs submitted in connection with my review of the administrative action."; *id.* 187).

So, my opening brief (Pet. App. 470) received an ersatz "response" (*see id.* 508) mostly copied verbatim from the dispositive motion brief (*cf. id.* 196); that overtly incorporated the Navarro Decl./exhibits—and, subliminally, the Rasca Decl./exhibits also supplementing the dispositive motion—*without* any Rule 56 hearing (*but see, i.e.,* the left-pending dispositive motion response, *id.* 327*; and see* the motion to compel, *id.* 247 (response, *id.* 325) that was denied 11/19/01 for reasons stated in hearing, *id.* 60).

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[25] S.Ct. No. 02–69, slip op. at 10 (4/29/03) *available at* http://www.supremecourtus.gov/opinions/02pdf/02-69.pdf

[26] 3/6/02 Order (citing *Olenhouse,* 42 F.3d at 1580)

I also suffered by Magistrate Judge Boland's choice:

> To the extent the Opening Brief contains language that is related to substantive claims, I will construe that language only as supporting Mr. Edwards' request for review of agency action under the APA. [10/21/03 Order at fn. 4; Pet. App. 8]

Denying appeal of remand on that election is untenable:

> But this Court also has clearly stated that a party is "aggrieved" and ordinarily can appeal a decision "granting in part and denying in part the remedy requested." [27]

That was stated in a case where, as here, it could be...

> contended that, because the agency had already had sufficient opportunity to prove the existence of [its claim] (and for other reasons), its [final action] should be reversed outright. The Court of Appeals... did not hear [the] claim, however, for it decided that [petitioner] did not have the legal right to appeal.[28]

Yet, *this* is not on district court, but *magisterial,* "review:"

> When a statute creates an office to which it assigns specific duties, those duties outline the attributes of the office. Any additional duties performed pursuant to a general authorization in the statute reasonably should bear some relation to the specified duties. *Gomez v. United States,* 490 U.S. 858, 864 (1989)

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[27] *Forney v. Apfel,* 524 U.S. 266, 271 (1998) (unanimous, finding appeal of SSA remand authorized) (quoting *United States v. Jose,* 519 U. S. 54, 56 (1996) (per curiam))

[28] *Id.* at 268 (citing *Forney v. Chater,* 108 F. 3d 228, 234 (1997)

Therefore, I am invoking the Court's supervisory power, not only with respect to appeal of a remand entered by a magistrate judge, but also regarding what I believe to be the highly prejudicial and illicit expansion of power under the Magistrate Act it took to get there—at my expense, over my timely written objections, and to the sole benefit of a miscreant government agency.

FIRST INSTANCE COURT RECORD CONTRADICTS RESULTS

9/22/00 offset is not 'informal agency action'

The agency's "judgment" sought to be reviewed (*see* Pet. App. 94)—announced by FMS notice of 9/22/00 tax refund offset that was filed under complaint ¶ 2 (*id.* 143), as exhibit A (*see reference, id* 158)—does not fall "[u]nder the APA, when a court reviews informal agency action, *as here...*" (*id.* 8) [emphasis added].

EDUC ordering the FMS to take $234.32 from me (and intending more) under the TOP program fit the magistrate judge's definition:

> Final agency action is agency action which imposes an obligation, denies a right, or fixes some legal relationship as a "consummation of the administrative process." Ash Creek Mining Co. v. Lujan, 934 F.2d 240, 243 (10th Cir. 1991) (quoting Chicago & Southern Air Lines v. Waterman Steamship Corp., 333 U.S. 103, 113 (1948))

10/21/03 Order, Pet. App. 7. It was clear error not to recognize 9/22/00 offset as final agency action.

This caused the harm of failure to return that 9/22/00 to me when "[i]n particular, there is no evidence that the loan was funded" (10/21/03 Order, Pet. App. 10); since "no evidence" *must fail under every circumstance* enumerated in 5 U.S.C. § 706(2)—regardless of whichever of those standards of judicial review is applied.

Trial, not appeal, of ultra-vires acts made sense

I filed a "complaint" rather than an "appeal" because I did not ever receive a student loan check.[29] Therefore, I expected the agency to be *tried* for acting outside its statutory power to collect *student loan debts* (*i.e.*, "under color of authority," or *"ultra-vires,"* I believe). It would have seemed strange to have to *appeal* a claim that was unsubstantiated (EDUC has never met a burden-of-proof on alleging a loan contract). I was of the mind:

> This suit is not one to "review," in the sense of that term as...a decision of the [agency] made within its jurisdiction. Rather it is one to strike down an order of the [agency] made in excess of its delegated powers and contrary to a specific prohibition...[30]

...here against collecting by TOP without a final agency determination that debt is due in amount stated with no legal bars (31 CFR 285.5(b)), *such as unresolved dispute*.

Even after the barely-foreshortened pretrial process *and* a pseudo-appeal based only on counsel's choice of records and supplement, "[i]n particular, there is no evidence that the loan was funded." (Pet. App. 10); so it is surreal to see the phrase "a student loan debt" casually used in introductions to the magistrate judge's order for judgment (*id.* 1) *and* the circuit panel's dismissal (*id.* 98).

Except as related to school "records" (*but see, i.e.*, pretrial order #7 *trial* exhibits; Pet. App. 32), all party disclosures, and counsel's (I wasn't asked for any) discovery answers, admissions and responses—and some of the copious 'production'—was filed in the Supplement to the Administrative Record the magistrate judge *let me base my briefs on,* and denied as moot a year later (*id.* 14).

I believe they are not "moot," but deserving of 28 U.S.C. § 636(c)(3) review as trial materials.

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[29] *See* 1984-85 ed., p. 491, 34 C.F.R. 682.401(b)(6); Pet. App. 132)

[30] *Leedom v. Kyne,* 358 U.S. 184, 189 (1958)

Admin. Record allowed to omit "the lender"

The "Administrative Record" (AR) filed 5/15/02 as docket #99 (Pet. App. 410) *obviously* omitted internal agency reports. *I.e.,* the Navarro Decl. that was ultimately incorporated by "appeal" response brief reference, and considered in supplement to the record (*see id. 12*), had included the following other reports as exhibits: *F* [R103] Account Transaction; *G* [R101] Research Account, and *H* [L130] Rehabilitation and Consolidation.

In fact, the Supplement to the Administrative Record (SAR) (*see* Index, Pet. App. 436) held the earliest versions disclosed of *all* EDUC reports disclosed under Fed. R. Civ. P. 26(a)(1). Striking out AR and Navarro's filings leaves: #153 CSAC Contact History; ~~#154-164 [L102] Collector Notepad (print over 2 dates);~~ ~~#165 [L106] Letter History;~~ #168 [L108) Audit Trail; #170 [L109] Debt Level; ~~#172 [L130] Rehab. & Consolidation;~~ ~~#173 R101 Research Account;~~ ~~#174 [R103] Account Transaction;~~ #176 [R104] Payment Detail; ~~#178 [R107] GSL Program Specific;~~ ~~#180 [R109] Account Profile;~~ #182 [R111] Referral History; #183 [I100] Federal Offset Account Screen and #185 National Student Loan Data System printouts.

Without explaining *why* even internal agency reports are moot, Magistrate Judge Boland denied the SAR.[31]

This allowed the agency to evade identifying its claim's *originating lender of record,* which was *not First Independent Trust (#828374) of the note,* but BoA (Bank of America #801178) according to SAR #170: [L109] Debt Level Information (*see* Pet. App. 456)—which I advised the magistrate judge of in my Opening Brief, identifying that report in footnote 44 (*id.* 499).

Magistrate Judge Boland noted I signed the First Independent Trust note; then failed to name Bank of America even once as *"the lender" always otherwise being referred to* (*See* 10/21/03 Order in general; Pet. App. 1.)

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[31] I thought I had to prove where I got things, so I included copies of the postmarks on their envelopes—greatly inflating the page count

A double standard that speaks for itself

Disregarding the legal fact that 9/22/00 offset *already makes judicial review necessary*, remand directs:

> The DOE shall create a record which reflects the issues before it, its decisions regarding the issues, and the grounds upon which the decisions were based. In other words, the DOE shall create and preserve a record that will enable a reviewing court to evaluate the rationality of its decisions, if necessary. (10/21/03 Order, Pet. App. 13)

Conversely, the hearing on my motion to compel *complete*/legible Fed. R. Civ. P. 26 documents established:

> THE COURT: * * * You, of course, are the United States Department of Education, not the California--you represent -- not the California Guaranteed Student Loan program?
> MR. KRUMHOLZ: Right.
> THE COURT: Have you made an--have you obtained their entire file?
> MR. KRUMHOLZ: As far as I know, yes. Now, the problem with--well, the answer is yes.[32]

> THE COURT: * * * there is no document that you have concerning the claims and defenses in this lawsuit which you have withheld just because of some technicality?
> MR. KRUMHOLZ: No, sir.[33]

> THE COURT: (Pause) On the motion for production of complete and legible documents filed by the plaintiff on October 3rd, 2001, the motion is denied...

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[32] 11/19/01 Hearing Tr. 6:24-7:6; Pet. App. 64
[33] 11/19/01 Hearing Tr. 8: 2-5 ; *id.* 65

Mr. Edwards, the obligation of a litigant to produce documents either voluntarily under Rule 26 or in connection with a request for production of documents is to produce all of those documents relevant to the lawsuit in their possession, custody or control. In this case, the Department of Education is not withholding any documents, I am told, and I have not been led to believe to the contrary based upon any relevance objection or other objection like that. They have given you the documents which are in their possession, custody and control.

That they don't have full and complete documents is a problem for each of you. It may be a problem for them in defending the lawsuit or not. But they can only give you what they have, and they tell me, and I have no reason to doubt that and you presented no evidence to the contrary, that they have more complete documents and they're just not giving them over. So I can't force them to do something that is impossible.

Now, as I say, this may become very important to one side or the other as we go to trial on the case, or as motions for summary judgment or the like are decided. But that's something we'll have to deal with as those events approach. Bur[sic] right now, I'm told the government's given you everything they have, they're as good as they've got, and that's all I can make them do. So I will deny the motion simply because it's not possible for the government--or the Department of Education to turn over anything more than they've given you.[34]

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[34] 11/19/01 Hearing Tr. 9:11-10:17; *id.* 66

Dispositive motion abuse

I had not filed my complaint as an appeal, and my response to the dispositive motion did not rest upon its mere allegations or denials. I set forth admissions, answers to interrogatories, and responses to requests; and filed disclosures and production, as enclosures; and identified specific facts rebutting the affidavits and showing that there are genuine issues for trial (*see* Pet. App. 327). The motion simply could have been denied before trial.

I think my motions to strike[35] unauthenticated material from outside the pleadings, even if inappropriate at that point, showed counsel's "exhibits" would not pass Federal Rules of Evidence for the claim at trial.

(Counsel dropped dispositive motion garbled student "records" and alleged Pell grant checks as "evidence;" they were not proposed agency trial exhibits. But finding the school "records" support my case; I listed them—and legible versions provided—for trial. *See* Pet App. 32.)

After that, Magistrate Judge Boland announced he would exercise appellate power to avoid disadvantage to me from *dispositive motion use*, defining the issues and presenting evidence from outside the record. (Pet. App. 36) Various objections to trial vacatur/appeal process outside the appeal docket were denied (*id.* 38, 39, 41).

Then Magistrate Boland denied the *dispositive motion but invited its use* for his "review." (Pet. App. 41)

He accepted a *reduced-by-half, but almost verbatim copy of the dispositive motion* brief (Pet. App. 196) as the agency's "response" (*cf. id.* 508) to my opening brief.

He considered the *dispositive motion's* Navarro Decl., quoting it about a letter not in the AR (Pet. App. 12).

Then he remanded for the agency to create an adequate record to support its claim later (Pet. App. 13) and denied my supplement of all disclosures and discovery (but school items—not a real record) and denied party objections to each other's records, as moot; (*id.* 14).

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[35] *See* Pet. App. 256, 259, 264, 270, 274, 279 *and 295*

There are no post-offset agency proceedings

As required by the first/only notice of intent to offset I received (complaint exhibit E; Pet. App. 161), with a Debt Statement dated 9/5/97 (compl. ex. F; *id.* 166), I filed a request for agency review within 65 days—even the small Administrative Record reflects its receipt on 10/16/97 (*id.* 420). Since I did not receive *any* loan, I declined to also apply for discharge of a "loan made on or after 1/86;" the Hearings Branch never issued a review decision or even contact me again. Offset was taken 9/22/00 (*id.* 94).

There are no EDUC regulations regarding a post-offset administrative proceeding; the only instructions I received were in the 1997 notice (Pet. App. 165):

> ***Your Rights if ED Denies Your Objections and Treasury Offsets Your Federal Payment*** If you present objections to collection, ED will send you a written decision explaining whether ED will collect the debt in whole or in part, the reasons why, and the amount to be collected. If you disagree with this decision and your Federal payment is offset, you may have this decision reviewed by bringing a lawsuit in Federal district court.

When I received FMS notice of 9/22/00 offset of my tax refund for the EDUC claim, I brought "a lawsuit in Federal district court."

Now, as if collecting through TOP for a Bank of America loan/default claim against an unconsummated First Independent Trust note *could* have a reasoned explanation, or allowing EDUC to create a post-hoc "record" for the claim is fair; a magistrate judge has exercised district judge appellate discretion to "remand," while failing even to mention—much less set aside—the 9/22/00 offset that was not shown to be for a legally enforceable debt, after required statutory process.

> "... [t]here is a fundamental inconsistency in requiring a person to continue 'exhausting' administrative processes *after administrative action has become, and while it remains, effective.*" S. Rep. No. 752, 79th Cong., 1st Sess., 27 (1945); Administrative Procedure Act: Legislative History 1944–1946, S. Doc. No. 248, 79th Cong., 2d Sess., 213 (1946)[36] [Emphasis added.]

The circuit court dismissal of 28 U.S.C. § 636(c)(3) appeal to this gratuitous remand on final agency action effectively upholds an exhaustion requirement imposed by a magistrate judge, beyond the bounds of consent and reason, since I filed for administrative review when I was required to, and 9/22/00 offset was already taken.

> Courts are not free to impose an exhaustion requirement as a rule of judicial administration where the agency action has already become "final" under the Administrative Procedures Act.[37]

The agency has already demonstrated what it will do; and the lower courts intend to leave me to it.

But the Fifth Amendment is supposed to guarantee that *no person* (and I truly believe that should include me) be deprived of liberty, or property, without due process of law. My property interested in the refund of earnings overpaid as taxes is not the only issue here; further agency action to collect through out-of-court wage garnishment has been threatened—and the clearing of my name/correction of government records kept, and shared, about me—has been denied, to date. I perceive these to be deprivations of liberty/property interests in my good name, credit reputation, and peace of mind (that I will not be plagued further by the unresolved EDUC claim).

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[36] *Darby v. Cisneros*, 509 U.S. 137, 148 (1993)
[37] *Id.* at 154

Since EDUC didn't return the offset it can't justify, it may start "reporting" the debt to credit bureaus before I *can* get a judicial review. The Court must prevent that:

> "For '[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and *an opportunity to be heard are essential.*' *Wisconsin v. Constantineau,* 400 U.S. 433, 437..." [38] [Emphasis added.]

Since the offset was taken without a Hearings Branch decision, and the circuit court refused to review the judgment entered by the magistrate judge on exercising trial consent to hear the case as an appeal, I have not been "heard" to date--

> [T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.[39]

My current credit line reflects the proposition that "I am willing and able to arrange the repayment of any and all obligations I have actually incurred" (*see, i.e.,* Pet. App. 176); so it is not fair to leave this dispute unresolved—if I owe the money I will pay, if not, this should go no further.

However, if a plenary judicial review reveals that EDUC willfully or negligently honored a false claim in my name; then not only should my offset (and court costs) be reimbursed to me, but also all records kept or published in my name should be corrected/expunged (and, if statutory damages apply, they should be awarded).

CSAC is the entity that used a First Independent Trust note to collect for a Bank of America "loan/default."

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[38] *Board of Regents v. Roth,* 408 U.S. 564, 573 (1972)

[39] *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring)

Continuing to change how I must answer is cruelty: on disputing the claim promptly in writing, verification of debt was to be provided; on requesting agency review within 65 days of offset notice, the record was to be reviewed and a written decision issued; disagreement with subsequent offset was to be resolved in Federal district court; consent to exercise of jurisdiction by a magistrate judge was to result in a trial; any appeal of the 28 U.S.C. § 636(c) judgment was to be reviewed in the circuit court. (Obviously "verification of debt" was never provided if the district court found the record inadequate.)

Because—and only because—none of those avenues to address this dispute actually resolved it; the absurd result is that my Constitutional rights will be violated if the United States Supreme Court does not review—or cause to be judicially reviewed—the magisterial judgment entered about the 9/22/00 offset, *and* final agency action.

That is, Article III supervision—if needed—was a component of the consent agreement that was *the basis* of magisterial entry of judgment for the district court. And, the Fifth Amendment (and at least the Privacy Act and the Administrative Procedure Act) entitle every person injured by final agency action to judicial review thereof.

Here, if judicial review does not come through the Court, it will not be available at all.

OFFSET WITHOUT A SCINTILLA OF EVIDENCE

The "bottom line" is that the FMS 9/22/00 offset for the Department of Education's claim was based on an illusory connection between a promissory note that I signed in 1985 for a First Independent Trust advance that I didn't then receive—and an *unbelievably*-prompt alleged 4/16/87 CSAC payment for an undocumented 4/15/87 "default" on a "loan" by Bank of America (as originating *and* claiming lender), *for which I never even applied.* The magistrate judge found "[i]n particular, there is no evidence that the loan was funded" (Pet. App. 10), but inexplicably remanded, rather than setting offset aside.

However, the TOP process is not a discretionary set of rules—it is only to be used for legally enforceable debts, and after an agency completes the related process (here 34 C.F.R. 30.33). This could not possibly leave an offset for which there would be an inadequate record in court.

Because such final action must be set aside (5 U.S.C. 706(2)); and since EDUC retention of the 9/22/00 offset unjustly implies some legal right to keep it; the offset should be returned to me forthwith so that the agency cannot base further action on offset being "upheld."

Further, EDUC has advised that offset will be resumed when the reason it was suspended (my suit) is removed; and that administrative wage garnishment does not require court action. And, if the claim EDUC couldn't prove is "reported" to credit bureaus *to help create the record* it lacked below, this will ruin my excellent credit standing ($19,000 *on signature alone;* on earnings under $33,000 gross per annum), possibly irretrievably.

My family's goal of home ownership is at stake here (we can't afford a mortgage any time soon unless the interest rate is based on excellent credit); a threat we should not have to live with based on a remanded offset.

CONCLUSION

I disputed ever having received an advance from First Independent Trust long before pretrial disclosures revealed that the EDUC claim is for alleged 4/16/87 CSAC payment of an undocumented 4/15/87 default on a *Bank of America loan.*

I filed for review in 1997, and offset was taken 9/22/00 without a Hearings Branch decision, so I filed suit.

I consented to 28 U.S.C. § 636(c) trial jurisdiction, and timely filed my appeal upon entry of magisterial appellate judgment: a remand for EDUC *to create a record.*

I am now forced to approach the Court because the circuit court denied 28 U.S.C. § 636(c)(3) appeal based on the magistrate having entered remand.

The 9/22/00 offset was neither upheld nor set aside, and I believe I am entitled at minimum to judicial review under 5 U.S.C. 702; I also believe my consent in the district court included leave to appeal upon entry of judgment, notwithstanding any provision of law to the contrary—but, now, if the Court does not cause judicial review for both issues, they will not happen at all.

To maintain the integrity of federal court procedures, the Court must elucidate whether magisterial remand is final, as noted by the 1983 advisory committee about Fed. R.Civ. P. Rule 73(a)—and as presented under 28 U.S.C. § 636(c)(3)—or exempt from judicial review by non-finality.

Where, as here, district court refinement of magistrate judges' roles contravenes the separation of powers; the Court must supervise expansion into appellate, just as in criminal, matters to secure litigants' constitutional rights.

When parties consent to magisterial jurisdiction, the Court must ensure Article III review on the record of that court of first instance *upon entry of judgment*; if a party is aggrieved by conclusions of law, evidentiary rulings and findings of fact—or omissions thereof—and, so, appeals.

Because individuals are entitled to judicial review on agency final action (such as the 9/22/00 offset here); with no substantial justification for the claim in the *existing* record, the Court must ensure prompt vindication of individual rights in reasonable circumstances, notwithstanding delays the offending agency might prefer.

The only fair thing to do here is to honor the terms of the consent agreement freely entered into by government counsel, and apply the Federal Rules of Civil Procedure and Evidence as for trial to the records filed in, and 28 U.S.C. § 636(c) judgment entered by, the court of first instance; to determine the findings of fact, evidentiary rulings and conclusions of law as are right and just pertaining to my claims and the agency's 9/22/00 offset.

Respectfully submitted, this 20 December 2004.

BRUCE EDWARDS
Petitioner, pro se

PETITION APPENDIX

ENTERED IN CONJUNCTION WITH JUDGMENT

EDUC: none; 10th Cir.: none

D. Colo.: #121 Order (Remand) 10/21/03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO * * *

{Filed United States District Court Denver, Colorado
OCT 21 2003 Gregory C. Langham Clerk s/*BA*}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Appellant,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Appellee.

ORDER

This matter is before me on an administrative appeal filed by Bruce Edwards pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06. Complaint, 2. Mr. Edwards seeks review of the Department of Education's decisions regarding a student loan debt.

BACKGROUND

Mr. Edwards initiated this action by filing a Complaint. The Complaint, like all of Mr. Edwards' filings, is very difficult to understand. In addition to seeking review of the Department of Education's actions in enforcing a student loan debt, Complaint, ¶ 2, the Complaint seeks damages, declaratory relief, and injunctive relief and contains numerous allegations including fraud, libel, and slander. The Department of Education ("DOE") filed a motion for summary judgment or, in the alternative, motion to dismiss for lack of subject matter jurisdiction (the "Motion for Summary Judgment").

Subsequent to filing his Complaint, Mr. Edwards clarified that the purpose of this action is to seek review of agency action pursuant to the APA. Status Conference, Apri1 23, 2002. See also Complaint, ¶ 2 (stating that Mr.

Edwards "seeks judicial review of Defendant's final agency action" pursuant to 5 U.S.C. § 704); "Objections Required by Order dated 4/22/02 with Supplemental Designation of the Record," pp. 2, 4 (stating that "this suit is for review of agency action"). Consequently, on April 23, 2002, the Motion for Summary Judgment was denied without prejudice, the administrative record was ordered, and the parties were directed to file appellate briefs. See Olenhouse v. Commodity Credit Corp., 42 F.3d 1560, 1564 (10th Cir. 1994).

It is undisputed that on June 17, 1985, Mr. Edwards signed a promissory note for a Stafford student loan in the amount of $2,500.00 plus interest, Administrative Record ("AR"), p. 3; that the lender was First Independent Trust; and that the guarantor was California Student Aid Commission ("CSAC"). Id.

The DOE alleges that Mr. Edwards defaulted on his loan on April 15, 1987; that the DOE unsuccessfully attempted to secure payment on the loan through a series of letters and telephone calls dating at least to 1993; that Mr. Edwards finally sent a letter to the DOE contending that his student loan debt was too old to be enforceable; and that the DOE responded to Mr. Edwards' letter explaining that there is no statute of limitations on the collection of student loans and that the DOE appropriately referred Mr. Edwards' account to the U.S. Department of Treasury's Financial Management Service for offset. Defendant's Response Brief ("Response Brief"), p. 3.

Mr. Edwards alleges, in part, the following:

1. In late June of 1993, he received at his residence in California the first demand for repayment of the loan in the amount of $4,200.00. Complaint, p. 2, ¶ 7; Plaintiff's Opening Brief (the "Opening Brief"), p. 17 (incorporating the Complaint into the Opening Brief). He mailed a notice of dispute and called the agent on the day he received the demand, stating that he withdrew from enrollment at the school on the first day of class without receiving the requested loan. Id. No one responded to his notice of dispute, despite the fact that his address did not

change for seventeen months. Id. at p. 3, ¶ 10a. The DOE's lack of response resulted in noncompliance with numerous statutes and regulations, including the notice provisions of 34 C.F.R. §§ 682.410(b)(5).[1] Id. at ¶¶ 7-9.

2. A second demand in the amount of $5,417.30 was sent to him at his residence in Colorado in January of 1996. Complaint, p. 3, ¶ 10. He "timely replied by written dispute" but did not receive a response. Id. at p. 4, ¶10b. Several more demand letters were sent to him in 1996, and he received no response to his challenges to the loan. Id. at ¶¶ 11-12. He received a demand for $5,538.50 dated July 4, 1996. Id. at ¶ 13. This demand included a blank financial statement form. Id. Upon receipt of this demand, Mr. Edwards telephoned the agent, stated that he "withdrew from school on the first day of class without receiving the loan he applied for, and demanded a document showing receipt of a loan in his name, or that he be left alone. Defendant did not send evidence that the requested loan had been received." Id.

3. Mr. Edwards claims that on July 16, 1996, he was sent a demand for $5,556.04 and a "half-legible copy of the promissory note used to apply for the loan." Id. at p. 4, ¶ 14. "The only legible text on the back of the note . . .

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[1] Section 682.410(b)(5) provides that, after the guaranty agency pays a default claim on a loan but before it assesses collection costs against a borrower, it must provide the borrower with written notice regarding its proposed actions. The written notice must meet specific criteria including a statement of the outstanding principal, accrued interest, and any other charges owing on the loan; a demand that the borrower immediately begin repayment of the loan; an explanation of the rate of interest that will accrue on the loan, that all costs incurred in collecting the loan will be assessed to the borrower, the authority for assessing costs, and how the costs will be assessed; a notification that the agency will report the default to all national credit bureaus; an explanation of how to access loan records and how to request administrative review; a description of the grounds on which the borrower may object "that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;" a description of appeal rights and any right to judicial review; and a description of the collection actions the agency may take in the future. 34 C.F.R. § 682.410(b)(5)(vi).

shows assignment by the California guarantor on October 30, 1992." Id. at p. 5, ¶ 14b. Mr. Edwards did not receive notice of the assignment as required by 34 C.F.R. § 682.208(e).[2] Id.

4. Mr. Edwards continued to receive demand letters, and he continued to respond that "he never received disbursement," "no money was advanced for the promissory note," and no loan monies were ever received. Id. at ¶¶ 15-17. In January 1997, Mr. Edwards demanded copies of "everything related to disbursement of a loan in his name." Id. at pp. 5-6, ¶ 18. On January 29, 1997, he was sent a demand for $5,701.34 and a "'history according to our records'" showing the DOE's "setting up the account effective 6/14/93." Id. at p. 6, ¶ 18. In February 1997, Mr. Edwards responded that the DOE's "history" commenced years after he signed the promissory note, which was never executed. Id. at ¶ 19. He stated that the loan was never received and asked that all collections cease and desist. Id.

5. The DOE sent a demand, dated August 8, 1997, for copies of Mr. Edwards' tax records. Id. at ¶ 20. Mr. Edwards replied that "he attended one class, learned the computer system was not current, submitted written withdrawal that day at the direction of the school administrator, never had contact with the school again, was not contacted about a loan until Defendant's demands, did not receive a loan; if a loan was made, it was done without his permission, and he believed the school signed his name on any authorization for receipt." Id.

6. The DOE sent Mr. Edwards a Notice of Proposed Treasury Offset of Federal Income Tax Refund and Other Federal Payments. Id. at ¶ 21. Subsequently, Mr.

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[2] Section 682.208(e) provides that if the assignment of a Stafford loan will result in a change in the identity of the party to whom the borrower sends subsequent payments, notice of the assignment must be sent to the borrower. 34 C.F.R. § 682.208(e)(1). The notice must include the identity of the assignee; the name and address of the party to whom subsequent payments and communications must be sent; and the telephone numbers of the assignor and the assignee. Id.

Edwards' account was referred to the Treasury Offset Program for offset. Id. at p. 14, ¶ 39.

STATUTORY AND REGULATORY BACKGROUND

Stafford loans are administered through the Federal Family Education Loan Program ("FFELP"). 34 C.F.R. § 682.100(a). FFELP is one of several federally-sponsored loan programs authorized under Subchapter IV, Part B, of the Higher Education Act of 1965, codified at 20 U.S.C. § 1071, *et seq.* (the "HEA").[3] Id. The regulations governing the FFELP are codified at 34 C.F.R. 682.

The DOE asserts, and Mr. Edwards does not dispute, the following overview of the FFELP:

> Under the [FFELP], a private lender provides the student with the money and a State or non-profit guaranty agency guarantees the loans. The Department of Education serves as the reinsurer of the loans pursuant to a reinsurance agreement with the guaranty agency. If a borrower of a FFELP loan defaults . . ., the guaranty agency reimburses the holder of the loan, takes assignment of the loan and promptly claims reimbursement from the Department of Education under its reinsurance agreement. 34 C.F.R. § 682.406. Even after the Department of Education pays the reinsurance claim, the guaranty agency is under an obligation to use due diligence to collect on the loan. If the guaranty agency is unsuccessful in collecting the loan, it may assign the loan to the Department of Education, which then takes title of the loan and engages in its own collection efforts.

Response Brief, p. 2.

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[3] The HEA created the Guaranteed Student Loan Program. In 1992, Congress changed the name of the program to the Federal Family Education Loan Program. Pub.L. No. 102-325, Title IV, § 411(a)(1), 106 Stat. 510.

The Treasury Offset Program (the "TOP") is a centralized debt collection program authorized pursuant to the Debt Collection Improvement Act, 31 U.S.C. §§ 3716, *et seq.*, through which an individual's debts to federal agencies may be offset against income tax refunds. The primary purpose of the TOP is "to increase the collection of nontax debts owed to the Federal Government." Exec. Order No. 13019, 61 Fed. Reg. 51,763 (Sept. 28, 1996).

LIMITATIONS ON REVIEW

Mr. Edwards seeks judicial review of the DOE's actions pursuant to the Administrative Procedure Act (the "APA"). Although the APA provides for judicial review of agency actions under 5 U.S.C. § 702, section 701 (a) provides two exceptions to the APA's entitlement to judicial relief. The first exception prevents judicial relief where "statutes preclude judicial review." 5 U .S.C. § 701 (a)(1). The second exception precludes judicial relief where "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). The second exception applies where "the statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." Heckler v. Chaney, 470 U.S. 821, 830 (1985). In other words, if the court has no judicially manageable standards to judge how, when, or if the agency should exercise its discretion, it is impossible for the court to evaluate the agency's action for abuse of that discretion. Id. at 830, 835.

The parties do not address these exceptions to judicial review of agency action. However, my research indicates that Congress has not expressly prohibited review of the DOE's actions in determining the validity of a Stafford student loan or in collecting a debt upon default of the Stafford student loan.

As to the second exception, Mr. Edwards alleges that the DOE violated numerous statutory and regulatory provisions. Opening Brief, Complaint. I do not address each provision cited by Mr. Edwards. I note that many of the cited provisions are not amenable to judicial review.

Two of the notice provisions, however, clearly do not commit action to agency discretion by law. 34 C.F.R. § 682.410(b)(5)(vi); 34 C.F.R. § 682.208(e). These provisions are discussed below because they are illustrative of the deficiencies in the Administrative Record.

In addition to the limitations in section 701 (a), review under the APA is available only when "there is no other adequate remedy in a court" and only after "final agency action." 5 U.S.C. § 704. The parties do not assert that Mr. Edwards can pursue other adequate remedies which would render judicial review unavailable. The parties disagree, however, on the application of the concept of "final agency action" to this case.

The DOE asserts that the final DOE action is a letter to Mr. Edwards from the DOE Regional Director, Diane Spadoni, dated August 21, 2000. Response Brief, pp. 4-5. The letter addresses two of "a series of administrative decisions with regard to [Mr. Edwards'] various arguments protesting his obligation on the student loan." Id. at p. 4. Specifically, the letter addresses (1) Mr. Edwards' alleged assertion that the debt is no longer enforceable due to the statue of limitations, and (2) Mr. Edwards alleged objection to the DOE's referral of the debt to the TOP for offset. AR p. 1. The DOE concludes that because the letter is the final DOE decision, it constitutes "final agency action" and it defines the issues to be reviewed in this case. Response Brief, p. 4. The DOE's application of "final agency action" is erroneous.

Final agency action is agency action which imposes an obligation, denies a right, or fixes some legal relationship as a "consummation of the administrative process." Ash Creek Mining Co. v. Lujan, 934 F.2d 240, 243 (10th Cir. 1991) (quoting Chicago & Southern Air Lines v. Waterman Steamship Corp., 333 U.S. 103, 113 (1948)). A court must decide whether final agency action has occurred in order to determine if a case is ripe for judicial review. Id. at 241. "Our application of the doctrine of ripeness prevents courts from entangling themselves in administrative policy disagreements and protects the

agencies from judicial interference until an administrative decision is formalized and its effects felt in a concrete way by the challenging parties." Mobil Exploration & Producing U.S., Inc. v. Dept. of Interior, 180 F.3d 1192, 1197 (10th Cir. 1999) (internal quotations omitted).

Final agency action is not synonymous with final agency communication. An agency's final communication may occur well after an administrative decision is formalized. Here, the agency formalized its decision regarding the alleged debt when an obligation was imposed upon Mr. Edwards to pay it. The exact date that the obligation to pay was imposed is unclear from the sparse Administrative Record before me. However, it is clear that Mr. Edwards' obligation to pay was imposed on or before the date that the DOE referred his account to the TOP for offset--a date that was obviously prior to the issuance of Ms. Spadoni's letter. The DOE's attempt to limit my review of this case to the issues addressed in Ms. Spadoni's letter is unpersuasive. I may review the agency's decisions as permitted by the APA.

ANALYSIS

Mr. Edwards' Opening Brief is confusing.[4] Mr. Edwards does not dispute that he signed the promissory note. Complaint, p. 12, ¶ 35d. He does challenge, however, on numerous grounds the validity of the debt and the DOE's actions in attempting to collect the debt. including the DOE's alleged failure to comply with the notice provisions of 34 C.F.R. §§ 682.410(b)(5)(vi) and 682.208(e). Complaint, p. 2, ¶ 8e and p. 5, ¶ 14b.

Under the APA, when a court reviews informal agency action, as here, the action must be set aside if it fails to meet statutory, procedural, or constitutional requirements or if it was arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706; Citizens to Preserve Overton Park. Inc. v. Volpe, 401 U.S. 402,413-14 (1971)

[4] To the extent the Opening Brief contains language that is related to substantive claims, I will construe that language only as supporting Mr. Edwards' request for review of agency action under the APA.

overruled on other grounds by Califano v. Sanders, 430 U.S. 99, 105 (1977); Olenhouse, 42 F.3d at 1573-74.

In determining whether an agency's decisions were arbitrary or capricious, a court may not "substitute its judgment for that of an agency." Overton Park, 401 U.S. at 416. Instead, the reviewing court must determine whether the agency's decision "was based on a consideration of the relevant factors and whether there has been a clear error of judgment." Id. As summarized by the Tenth Circuit Court of Appeals:

> The duty of a court reviewing agency action under the "arbitrary or capricious" standard is to ascertain whether the agency examined the relevant data and articulated a rational connection between the facts found and the decision made.
>
> ***
>
> Because the arbitrary and capricious standard focuses on the rationality of an agency's decisionmaking process rather than on the rationality of the actual decision, "[i]t is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself." Thus, the grounds upon which the agency acted must be clearly disclosed in, and sustained by, the record

Olenhouse, 42 F.3d at 1574-75 (quoting Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co., 463 U.S. 29, 50 (1983)).

The DOE has taken a very narrow view of the issues presented in this appeal. Consequently, in response to my order directing the DOE to designate the Administrative Record, the DOE submitted only a copy of Ms. Spadoni's letter, a copy of the promissory note, and numerous computer printouts. Notice of Filing Administrative Record, filed May 15, 2002. None of these items

are helpful in reviewing the actions complained of by Mr. Edwards, including his allegations regarding the validity of the debt and the DOE's failure to comply with the notice requirements of sections 682.410(b)(5)(vi) and 682.208(e).

The letter addresses only Ms. Spadoni's response to Mr. Edwards' allegation that the debt is no longer enforceable due to the statute of limitations and his objection to the DOE's referral of the debt to the TOP for offset. AR, p. 1.

The copy of the promissory note is, in large part, illegible and shows only Mr. Edwards' obligation on the date of signing. The note does not provide any information regarding events subsequent TO its execution that may have impacted Mr. Edwards' obligation on the debt. In particular, there is no evidence that the loan was funded. The DOE relies entirely on the promissory note as proof that Mr. Edwards is obligated to repay on the loan.[5]

The computer printouts are, by the DOE's own admission, "indecipherable computer screen printouts." Response Brief, p. 5, n.2. The printouts are so heavily abbreviated as to render them essentially unintelligible. For example, page 20 of the AR includes an entry dated April 7, 2000. The text of the entry is as follows:

> IN LTR SD REVWD CORR T WAS SNT.SD NOTES DO NOT INDICATE VRFCTN TO BORR. EXPLNS BORR CNTCT W/ US. EXPLNS THE CFDCPA SD VR IS IN VIOLATION OF THE ACT.SD VR MUST IMMDTLY CHNG NOTICES TO CMPLY

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[5] Indeed, the DOE states "[t]he notion that Ms. Spadoni or anyone else with the Department of Education would have pored over hundreds of pages of documents to determine the enforceability of a $2,500 student loan -when they had in front of them a copy of the promissory note with Mr. Edwards' signature - is absurd." Defendant's Objection to Plaintiff's Supplementation of the Administrative Record (filed June 21, 2002), 4.

W/CRRNT CO LAW.THE COLLCTN AGNCYS DO NOT WARRANT A FRML ADMINSTRTV HEARING FOR DSCPLNRY ACTN.SD VR MAY APPEAL THE ISSUANCE OF THIS LTR BY RQSTNG A HEARNG W/COLLCTN AGNCY BOARD.SD REQ MUST BE W/IN 40 DYS OF RECEIPT OF LTR.SD A FRML CMPLNT WL THEN BE ISSD AND CASE WL BE SNT FOR FULL DISCPLNRY HEARNG.FRWRD CPS TO TAR, MTP, LPS, AND MARY

AR 20.

It is impossible to determine from the computer printouts which issues Mr. Edwards presented or did not present to the agency, which issues the DOE addressed or did not address and, consequently, whether the DOE examined relevant data and articulated a rational connection between any facts it found and any decisions it made regarding the validity of the debt.[6] It also is impossible to determine from the printouts whether the agency complied with the notice provisions of 34 C.F.R. §§ 682.410(b)(5)(vi) and 682.208(e).

The DOE acknowledges that the computer records are "indecipherable." Response Brief, p. 5, n.2. Citing Franklin Sav. Ass'n. v. Director Office of Thrift Superv., 934 F.2d 1127, 1137-38 (10th Cir. 1991), the DOE concedes that "judicial review is generally confined to the record made before the agency and may not include matters outside the records," but asserts that "the court may make

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[6] Referring to page five of the Administrative Record, the DOE asserts that Mr. Edwards defaulted on his loan on April 15, 1987. Response Brief, p. 2 ¶ 2. Page five of the Administrative Record is a computer printout, largely indecipherable, that states "DEFTDTE 04/15/87." Other than this printout, the Administrative Record is void of any information regarding the status of the debt from the time Mr. Edwards signed the promissory note in 1985 until the DOE's computer records began in 1993.

exceptions where it is necessary for the court to have an explanation of complex matters of a highly technical nature." Response Brief, p. 5, n.2. Pursuant to Franklin, the DOE provides the declaration of Nicholas Navarro to explain the computer printouts. Id.

Assuming that Franklin permits me to look outside the administrative record to Mr. Navarro's declaration, the declaration is not helpful. Mr. Navarro does not address many of the issues presented by Mr. Edwards, including compliance with the notice provisions of 34 C.F.R. §§ 682.410(b)(5)(vi) and 682.208(e). Motion for Summary Judgment, Exhibit 1. pp. 10.

More importantly, the computer printouts and Mr. Navarro's explanations of the computer printouts are based solely on the agency's own summary of its communications with Mr. Edwards. Even if I could understand the printouts, I do not know if the entries are accurate reflections of Mr. Edwards' communications with the agency or if they are merely selective summaries of the communications. To the extent the computer printouts reflect decisions made by the DOE regarding the validity of the debt, there is no record upon which to review such decisions.[7]

The case law in this circuit "mandates that agency decisions be sufficiently detailed that [the reviewing court] can determine whether the agency considered the relevant factors and that the choice it made based on those factors was a reasonable one." Friends of the Bow v. Thompson, 124 F.3d 1210, 1219 (10th Cir. 1997) (inter-

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[7] For instance, Mr. Navarro states that on September 2, 1998, Mr. Edwards sent a letter to the collection agency stating that he did not receive the loan and that he withdrew after the first class. Navarro Declaration, p. 10, ¶ 28. Mr. Navarro further states that Ms Spadoni responded by explaining that "it is the borrower's responsibility to remember his obligation and maintain contact with the holder of his loan and that if a refund was due to him, it would have been made in accordance with the school's published refund policy." Id. at ¶ 29. The grounds upon which Ms Spadoni acted are not clearly disclosed in, or sustained by, the record.

nal quotations and citation omitted). "[A]n agency must articulate the grounds for its decision with enough detail to enable the reviewing court to determine whether the agency considered the relevant factors and made a reasonable choice." Board of County Commissioners v. Isaac, 18 F.3d 1492, 1497 (10th Cir. 1994). It is impossible to determine from the Administrative Record if the DOE considered relevant factors and made reasonable decisions regarding the validity of the debt, or whether the DOE complied with the notice provisions of 34 C.F.R. §§ 682.410(b)(5)(vi) and 682.208(e).

Mr. Edwards seeks to supplement the Administrative Record with 472 additional pages. Objections Required by Order dated 4/22/02 with Supplemental Designation of the Record. The DOE objects to Mr. Edwards' proposed supplementation of the Administrative Record. Defendant's Objection to Plaintiffs Supplementation of the Administrative Record.

"If the agency has failed to provide a reasoned explanation for its action, or if limitations in the administrative record make it impossible to conclude the action was the product of reasoned decisionmaking," the reviewing court has discretion to supplement the record or to remand the case to the agency for further proceedings. Olenhouse, 42 F.3d at 1575. Both conditions exist here. Accordingly, this case shall be remanded to the DOE for further proceedings. The DOE shall address Mr. Edwards' concerns regarding the validity of the debt and the collection of the debt. The DOE shall create a record which reflects the issues before it, its decisions regarding the issues, and the grounds upon which the decisions were based. In other words, the DOE shall create and preserve a record that will enable a reviewing court to evaluate the rationality of its decisions, if necessary.

IT IS ORDERED that this action is REMANDED to the Department of Education for further administrative proceedings consistent with this Order.

IT IS FURTHER ORDERED that Mr. Edwards' Objections Required by Order dated 4/22/02 with Supplemental Designation of the Record, filed June 7, 2002, and the DOE's objections entitled Defendant's Objection to Plaintiff's Supplementation of the Administrative Record, filed June 21, 2002, are DENIED AS MOOT.

DATED October 21, 2003.

BY THE COURT:

s/*Boyd N. Boland*

United States Magistrate Judge

RELEVANT DECISIONAL MATERIAL

EDUC: Hearings Branch letter 10/30/97

U.S. Department of Education
Office of Postsecondary Education
50 United Nations Plaza - Region IX
San Francisco, Ca 94102-4987

San Francisco Service Center October 30, 1997

Bruce Edwards
1001 Emporia Street
Aurora, CO. 80010

SSN: [* * *] DEBT ID# G199309030022801

Dear Mr. Edwards:

This is in response to the REQUEST FOR REVIEW form you returned on which you noted objections to the proposed offset of your Federal refund and other Federal payments because of a defaulted student loan or grant claim in your name or associated with the Social Security Number (SSN) shown above.

You indicated on your Request for Review form that you object to IRS offset on the basis that the school you attended with the loan(s) in question improperly certified your ability to benefit from the training offered, or you did not meet the legal State requirements for employment in the field of study undertaken at the school due to a mental or physical condition, age, or criminal record. The U.S. Department of Education (ED) has noted your objection; however, since Department regulations require

that applicants submit a sworn statement made under penalty of perjury, we do not have sufficient information to determine your eligibility for False Certification loan discharge based upon the information provided on the Request for Review form. We have enclosed a discharge application for your use. Please provide answers to all of the information requested. If you do not know or cannot get the information requested, you should state so and the reason you are unable to provide a complete answer. The full criteria by which borrowers may qualify for such a discharge of Federal Family Education Loans received after January 1, 1986 are set forth in Department of Education regulations 34 C.F.R., Section 682.402 (1994).

You also indicated that the school attended with the loan(s) used your signature without your authorization to endorse loan documents. The U.S. Department of Education (ED) has noted your objection; however, since Department regulations require that applicants submit a sworn statement made under penalty of perjury, we do not have sufficient information to determine your eligibility for False Certification loan discharge based upon the information provided on the Request for Review form. We have enclosed a discharge application for your use. Please provide answers to all of the information requested. If you do not know or cannot get the information requested, you should state so and the reason you are unable to provide a complete answer. The full criteria by which borrowers may qualify for such a discharge of Federal Family Education Loans received after January 1, 1986 are set forth in Department of Education regulations 34 C.F.R., Section 682.402 (1994).

This notice applies only to those loans currently held by the U.S. Department of Education. If you have other loans held by guaranty agencies, you should contact those agencies to object to any IRS offsets proposed by those agencies on behalf of the Department. Please return these forms within 30 of the date of this letter.

Until your completed application is received by ED, collection efforts will continue. However, if you return the

completed application, the loan will be in "forbearance" while we are deciding whether to discharge your loan. If you have any questions please call (415) 487-5010.
Sincerely,

s/*S Amey*
Shirley L. Amey
Senior Loan Analyst Hearings Branch
Enclosure / CC: Diversified Collection Services
* * * [2 applications: Unauth. Sign. & Abililty to Benefit]

D. Colo.: #15 Order (of Reference) 5/8/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE

{Filed United States District Court Denver, Colorado MAY 08 2001 James R. Manspeaker Clerk by s/*DG*}

Civil Case No. 01-B-36
BRUCE EDWARDS
Plaintiff,

v.

U. S. DEPARTMENT OF EDUCATION,
Defendant.

ORDER OF REFERENCE PURSUANT TO 28 U.S.C. § 636(c)

Pursuant to D.C.COLO.LR 72.6 on the 3rd day of May, 2001, the parties filed their unanimous consent to disposition of the above action by a United States Magistrate Judge. Now, therefore, being sufficiently advised,

IT IS ORDERED as follows:

1. The above action is referred for disposition to a magistrate judge pursuant to 28 U.S.C. § 636(c);

2. The above action will be reassigned to a magistrate judge selected by random draw, excluding Magistrate Judge Michael J. Watanabe; and

3. Upon such reassignment, the above case number will be amended to reflect the magistrate judge to whom the case is reassigned.

DATED: May 8, 2001

BY THE COURT:
s/*Lewis T. Babcock*
Lewis T. Babcock,
Chief Judge

#22 Scheduling Order (Trial) 5/18/01

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{ RECD MAY 3 2001}
{Filed United States District Court Denver, Colorado
MAY 18 2001 James R. Manspeaker Clerk }

Civil Action No. ~~01 B 36~~ *01-BB-36*

Bruce Edwards, PLAINTIFF

v.

U.S. Department of Education, DEFENDANT

SCHEDULING ORDER

1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL AND *PRO SE* PARTIES

Scheduling/Planning Conference for Civil Action No. 01 B 36 on May 10.2001, presided by United States Magistrate Judge ~~Michael J. Watanabe~~ *Boyd N. Boland*, and attended by Bruce Edwards, *pro se*, of 1001 Emporia St., Aurora, CO 80010-3825, (303) 341-9433 (non-published), except that if request for joinder of Co-Plaintiff pending at the filing of this Scheduling Order is granted, then by Dani Edwards, of the same residence, instead, and by Kenneth R. Buck, Assistant United States Attorney, 1225 17th St., #700, Denver, Co 80202, (303 454-0100, counsel for United States Department of Education, Defendant. No other parties who have not entered an appearance have been identified.

2. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff: Defendant generated Treasury offset of Plaintiff's 1999 Federal income tax return for an alleged student loan, having provided as proof copies of a signed 1985 promissory note for which Plaintiff advised the value or consideration described was not received. Referencing presumption that a third party not appearing

on the promissory note may have received the funds, Defendant declined to provide Plaintiff proof of the existence of the alleged debt; refused to correct the related record; withheld timely access to administrative appeals and failed to deliver written determination of review for timely filed request upon Treasury offset notice, providing for identification of lack of response as final agency action; and invited suit in Federal district court if Plaintiff's taxes were offset and he disagreed with the decision. Judicial review of this matter, from initial decision through final agency action, is sought for all applicable findings, determinations and results this Court deems proper.

b. Defendant: The defendant asserts that the promissory note bears the plaintiff's signature. In addition, the evidence will show that the funds were disbursed on behalf of the plaintiff. The defendant is unaware of any reason why the plaintiff should not be required to pay his debt.

c. Other Parties: None.

3. UNDISPUTED FACTS

To be determined. *None.*

4. COMPUTATION OF DAMAGES

a. Plaintiff: *Plaintiff disputes validity of debt in the amount $6534.56, including offset of $234.32. Statutory damages of not less than $1,000.00*

b. Defendant: [blank]

5. REPORT OF PRE-CONFERENCE DISCOVERY & MEETING UNDER FED. R. Civ. P. 26(f)

a. Date of Rule 26(f) meeting was via telephone conference at 2:00 p.m., April 16. 2001.

b. Rule 26(f) meeting participants were Bruce Edwards. Plaintiff *pro se*, with Dani B. Edwards assisting Plaintiff, and Kenneth R. Buck, Assistant United States Attorney, counsel for U.S. Department of Education, Defendant.

c. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1) are: None to date.

d. Rule 26(a)(1) disclosures were made or will be made as follows (including explanations showing good cause for omissions): Plaintiff to submit written disclosure by Wednesday, April 25, and Defendant to submit written disclosure by April 30, 2001.

e. Agreements to conduct informal discovery include:

1. Joint interviews with potential witnesses agreed to by parties and witnesses: None.

2. Scheduled exchanges of documents are: Plaintiff submitted requests for documents, counsel for Defense to advise of requirement for documents, if any; scheduled exchange to be determined at Conference on May 10.

3. Joint meetings to discuss settlement: To be arranged after conference between Defendant and Defense counsel, who will advise Plaintiff of appropriate opportunity.

6. CONSENT

a. (✓) All parties HAVE CONSENTED to the exercise of jurisdiction of a United States Magistrate Judge.

b. ( ) All parties HAVE NOT CONSENTED to the exercise of jurisdiction of a United States Magistrate Judge.

7. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings: To be determined at May 10 Conference. Plaintiff has indicated an intention to amend the Complaint. *June 29, 2001.*

b. Discovery Cut-off: To be determined at May 10 Conference. *August 31, 2001.*

c. Dispositive Motion Deadline: To be determined at May10 Conference. *October, 31, 2001*

d. Expert Witness Disclosure: None anticipated to date.

* * *

e. Deposition Schedule *which has been agreed to by the deponent and persons signing the Scheduling order:* None to date. Parties agree to avoid costs of depositions if possible. * * * [empty chart for potential depositions]

f. Interrogatory Schedule: Interrogatories are to be submitted and responded to as follows: To be determined

at May 10 Conference. *Discovery requests shall be served so that responses are due by the discovery cut-off.*

g. Schedule for Request for Production of Documents: Submission of requests for documents are to be submitted and responded to as follows: Schedule to be determined at May 10 Conference. *See part f, above.*

h. Discovery Limitations: None to date, to be determined at May 10 Conference.

1. Limit on the number of depositions has been proposed as follows: *5 per side*

2: Discovery re Limit on the length of depositions has been proposed as follows: *7 hours per deposition without leave of court.*

3: Modifications on the presumptive numbers of ~~depositions or~~ interrogatories contained in the federal rules has been proposed as follows: *50*

4. Limitations on number of requests for production of documents and/or requests for admissions has been proposed as follows: *25 production requests and 35 requests for admissions per side*

5. Other Planning or Discovery Orders: [blank]

8. SETTLEMENT

As required by Fed. R. Civ. P. 26(f), and certified by the signatures hereunder on this document, the parties have discussed the possibilities for a prompt settlement or resolution of this case. See #5e. 3. above for related discussion to date. The result of such discussion has been or will be reported to the magistrate judge within ten days of any such meeting wherein such discussion took or takes place.

9. OTHER SCHEDULING ISSUES

a. Those discovery or scheduling issues on which the parties, after a good faith effort, were unable to reach an agreement are: None to date.

b. The length of the trial is: ~~estimated by Defense counsel to be two days;~~ *2 day trial to the court* ~~and the trial is: to be determined at May 10 Conference as to when and whether by bench or by jury~~

10. DATES FOR FURTHER CONFERENCES

a. A settlement conference will be held on [blank] at [blank] o'clock [blank].M.

IT IS HEREBY ORDERED THAT ALL SETTLEMENT CONFERENCES THAT TAKE PLACE BEFORE THE MAGISTRATE JUDGE SHALL BE CONFIDENTIAL.

* * *

b. Status conferences will be held in this case at the following dates and times: [blank]

c. A final pretrial conference will be held in this case on *December 7, 2001* at *11:30* o'clock *A*.M. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than five days before the pretrial conference.

11. OTHER MATTERS

In addition to filing an appropriate Notice with the Clerk's office, counsel will file a copy of any notice of withdrawal, notice of substitution of counsel or notice of change of counsel's address or telephone number with the Clerk of the United States Magistrate Judge assigned to this case.

In addition to filing an appropriate notice with the Clerk's office a *pro se* party will file a copy of any notice of change of his or her address or telephone number with the Clerk of the United States Magistrate Judge assigned to this case.

With respect to discovery disputes, parties shall comply with D.C.COLO.LR 7.1. Parties opposing a discovery motion shall have 11 days in which to file a responsive brief. No reply briefs will be accepted. Discovery motions or briefs relating thereto shall not exceed ten pages in length (not including attachments or appendices).

The parties filing motions for extension of time or continuances shall comply with D.C.COLO. 7.1(C) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

12. AMENDMENTS TO SCHEDULING ORDER

This Scheduling Order may be altered or amended only upon a showing of good cause.

Trial: February 4 -5, 2002.

DATED this *17th* day of *May*, 2001. BY THE COURT:

s/*Boyd N. Boland*
~~MICHAEL J. WATANABE~~
~~United States Magistrate Judge~~
BOYD N. BOLAND
United States Magistrate Judge

s/*Bruce Edwards*
BRUCE EDWARDS Plaintiff *Pro Se*
1001 Emporia Street Aurora, CO 80010-3825
(303) 341-9433 (non-published) *4.29.01* Date

s/*Kenneth R. Buck*
KENNETH .R. BUCK
Assistant United States Attorney for
Defendant, US Department of Education
1225 17th Street, Suite 700 Denver, CO 80202
(303) 454-0100 *5/2/01* Date

#67 Order (Strike motions, et al.) 10/26/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado OCT 26 2001 James R. Manspeaker Clerk}

Civil Action No. 01-BB-36
BRUCE EDWARDS,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

ORDER

This matter is before me on the following motions by the plaintiff:

(1) **Plaintiff's Motion for Application of D.C.COLO.LR 7.1 or In the Alternative, for Application of Fed. R. Civ. P. 12(c)** (the "Motion for Enlargement"), filed October 10, 2001;

(2) **Plaintiff's Motion for Enlargement of October 2001, Period in Which to Respond to Motion for Summary Judgment or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1); Set by Minute Order Filed October 2, 2001** (the "Second Motion for Enlargement"), filed October 17, 2001;

(3) **Plaintiff's Motion to Strike Exhibit 2 of Defendant's Motion for Summary Judgment or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)** (the "First Motion to Strike"), filed October 17, 2001;

(4) **Plaintiff's Motion to Strike Exhibit 2/A of Defendant's Motion for Summary Judgment or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)** (the "Second Motion to Strike");

(5) **Plaintiff's Motion to Strike Exhibit 2/B of Defendant's Motion for Summary Judgment or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)** (the "Third Motion to Strike");

(6) **Plaintiff's Motion to Strike Exhibit 2/E-F of Defendant's Motion for Summary Judgment or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)** (the "Fourth Motion to Strike");

(7) **Plaintiff's Motion to Strike Exhibit 2/C-D of Defendant's Motion for Summary Judgment or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)** (the "Fifth Motion to Strike");

(8) **Fed. R. Civ. P. 12(f) Motion to Strike as Inadmissible to Defendant: Exhibit A of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1); and to Restrict related**

Fed. R. Civ. P. 26(a)(1)(B) A "Exhibit 1: Application for California Guaranteed Student Loan signed on May 6, 1985; loan amount: $2,500.00 to attend the Travel and Trade Career Institute (TTCI)" to Appearance in this Suit Without Inference between 5/6/85 and 4/28/01: Fed. R. Evidence 105 (the "Sixth Motion to Strike"), filed October 22, 2001; and

(9) **Fed. R. Civ. P. 12(f) Motion to Strike as Inadmissible to Defendant: Exhibit B of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1); and to Restrict related Fed. R. Civ. P. 26(a)(1)(B) A "Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985" as Defense Presented, Without Inference between 6/17/85 and 4/28/01: Fed. R. Evidence 105** (the "Seventh Motion to Strike"), filed October 22, 2001

The seven Motions to Strike all appear to be filed in response to the defendant's Motion for Summary Judgment or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. (the "Motion to Dismiss"), filed on October 1, 2001. By Minute Order dated October 2, 2001, I required the plaintiff to respond to the Motion to Dismiss on or before October 15, 2001. The plaintiff's multiple filings in opposition to the Motion to Dismiss are inappropriate. Consequently, each of the seven Motions to Strike is DENIED. The plaintiff shall file, on or before **November 20, 2001,** a single response in opposition to the Motion to Dismiss, captioned "Response in Opposition to Motion to Dismiss." The Response in Opposition to Motion to Dismiss must comply with the requirements of D.C.COLO.LR 5.1 and 7.1H, and shall not exceed 25 pages in length, double-spaced.

In view of the response deadline set above, the Motion for Enlargement and the Second Motion for Enlargement are DENIED AS MOOT.

According,

IT IS ORDERED that First, Second, Third, Fourth, Fifth, Sixth, and Seventh Motions to Strike are DENIED.

IT IS FURTHER ORDERED that the plaintiff shall file a single "Response in Opposition to Motion to Dismiss" on or before **November 20, 2001.**

IT IS FURTHER ORDERED that the Motion for Enlargement and Second Motion for Enlargement are DENIED AS MOOT.

DATED October 25, 2001

BY THE COURT:

s/*Boyd N. Boland*

United States Magistrate Judge

#84 Pretrial Order 2/1/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Rec'd JAN 25 2002}
{Filed United States District Court Denver, Colorado FEB 01 2002 James R. Manspeaker Clerk s/*SM* Dep Clerk}

Civil Action No. 01-BB-36
Bruce Edwards, Plaintiff,

v.

United States Department of Education, Defendant.

FINAL PRETRIAL ORDER filed 1/25/02

1. DATE AND APPEARANCES

Civil Action No. 01-BB-36 Pretrial Conference, at 9:00 a.m. on January 9, 2002, presided by United States Magistrate Judge Boyd N. Boland, and attended by plaintiff pro se Bruce Edwards, of 1001 Emporia Street, Aurora, Colorado 80010-3825, (303) 341-9433 (non-published, home) and by defendant United States Department of Education through the appearance of counsel, Peter Krumholz, Assistant United States Attorney, of 1225 17th Street, Suite 700, Denver, Colorado 80202, (303) 454-0100. No other parties have been identified. Corroboration between the parties to produce a more simplified Pretrial Order than the

eighteen page version submitted for the conference was ordered by January 25, 2002.

2. JURISDICTION

Jurisdiction is asserted under the following United States Code:

a. Title 5 Part I Chapter 7 & Chapter 5 Subchapter II §552a;
b. Title 28 Part IV Ch. 85 §1339, §1343, §1346(a)(1) & (2), §1355, §1361 and/or Ch. 87 §1395;
c. Title 28 Part VI Chapter 171 §2680a & §2680h;
d. Title 31 Subtitle III Chapter 38 §3803 & 3805(b)(1)(b)(i); and
e. Title 42 Chapter 21 Subchapter I §1988, and Chapter 21A Subchapter I Part B §2000aa-6(h)

3. CLAIMS AND DEFENSES

a. Plaintiff:

1. The defendant's 9/22/00 offset of the plaintiff's 1999 Federal tax refund was collected without the defendant having verified, by independent investigation and confirmation, specific information related to the claim it accepted in 1993 as the basis for that offset.
2. The defendant failed to complete—by required written notice about determinations and the reasons therefor, after review of the record and relevant evidence—the single opportunity to contest the finding of debt for offset that was sent to the plaintiff's address of record and not "returned undeliverable," for which the defendant recorded 10/16/97 timely filing of a request for review on the form provided by the defendant; no agreement to begin a repayment within a week of any such decision was required.
3 The defendant alleges that a claim it guaranteed arose as an obligation on the plaintiff's part under a specific written contract, but has made no showing of the consideration expressly specified in the terms and interpretive code effective for that agreement

to meet the plaintiff's defense of not having received that advance/loan from the lender.

4. The defendant's claim against the plaintiff is not a valid, legally enforceable debt owed to the Government by the plaintiff according to the express terms of his agreement, and the defendant lacks material lender documents/records required to be maintained by the state guarantor until the claim is fully paid or written off.
5 The defendant's pursuit of the claim against the plaintiff has not been within statutory authority under color of which the defendant has acted, nor have the standards applied and actions taken been in compliance with the code applicable to such authority.
6. The defendant's actions have violated the plaintiff's rights with respect to legal protections related to contracts, privacy and due process; and effectively circumvented the burden of proof upon alleging a contract by requiring the plaintiff either to acknowledge the existence of debt on his part based on a promissory note without evidence of its disputed consummation, or to file suit after involuntary collection.

b. Defendant: As to Plaintiff's APA claim, the Department's decision that Plaintiff's loan was outstanding and enforceable and that Education had provided him proper notice prior to offsetting his federal benefits in TOP was reasonably based on the factual circumstances of Plaintiff's loan history and applicable legal principles and statutes. The Department of Education's decision was not arbitrary or capricious nor was it an abuse of discretion and it should be upheld.

As to Plaintiff's claim that he does not owe the debt evidenced by the promissory note in this case, the note clearly bears Plaintiff's signature. Moreover, the evidence will show that he attended TTCI for five months and therefore received the loans in-kind at

least by attending the school for the full loan period, and that he signed for Pell Grant checks to finance his tuition more than five months after his enrollment. In short, the evidence will show that Plaintiff's contention that he never received the loan proceeds, never signed the checks, and that he only attended one class at TTCI, are completely without merit.

Finally, Plaintiff's claim for an injunction against the Department of Education is jurisdictionally barred. The Higher Education Act specifically forbids injunctions against the Department of Education. See 20 U.S.C. § 1082(a)(2) ("no attachment, injunction, garnishment, or other similar process... shall be issued against the Secretary or property under the Secretary's control..."). Plaintiff's claim for an injunction should therefore be dismissed for lack of subject matter jurisdiction.

c. Specific relief sought:

(1) Judicial review of the recorded basis of the defendant's 9/22/00 offset against the plaintiff, particularly as to performance of an agency review required by the plaintiff's 10/16/97 filing; for the setting aside of that decision and the refund of that offset.

(2) Judicial review of the records and relevant evidence on the required verification for the claim against the plaintiff specifically as to the written terms in, and effective code governing, the promissory note agreement alleged to have become a contract versus the actual hard-copy evidence/lack of evidence disclosed for its disputed consummation prior to this suit; for the setting aside of finding it was valid or legally enforceable.

(3) Statutory damages for each violation of the Administrative Procedure Act and the plaintiff's rights, with respect to the agency record and actions against him including those provided for by extension of the applicable deadline for action due

to discovery of previously withheld records and information material to the defendant's liability.

(4) Damages equal to those collectible by the defendant for the presentation of false claims for each of the demands received by the plaintiff that the defendant caused to be sent without showing the consideration for the alleged contract after the defendant's initial record of receiving the plaintiff's written dispute for verification in June of 1996.

(5) For any other award of damages related to the issues raised in the pro se plaintiff's Complaint, in law or in equity, in the jurisdiction of this Court.

4. STIPULATIONS

(1) The lender identified on the subject promissory note is #828374, First Independent Trust.

(2) The defendant's claim/debt number assigned, and identifying the defendant's account under the plaintiff's personal identifiers, is G199309030022801.

(3 The defendant's claim #G199309030022801 is recorded as for Federal guarantee of the April 16, 1987 payment by CSAC for the April 15, 1987 default claim of lender #801178, showing a June 21, 1985 disbursement and a 12/13/85 withdrawal date.

(4) Defendant has not provided a copy of an endorsed loan check.

(5) Prior to this suit the defendant advised the plaintiff, "You state that you did not receive the funds from your student loan. The funds from student loans are frequently applied by schools to enrollment expenses, such as tuition, fees, and other school charges. Students frequently do not directly receive the funds."

(6) "623 Broadway #1, Long Beach, California, 90802," was the address used for the defendant's mailings to the plaintiff prior to January, 1996.

(7) The first 3 consecutive mailings from the defendant to the plaintiff at '623 Broadway #1, Long Beach,

CA 90802,' were recorded by the defendant as "returned undeliverable"

(8) The defendant referred claim G199309030022801 to agency #RT480, Diversified Collection Service, Inc. ("DCSI"), on 3/16/96 and accepted its return on 3/21/98 without collection of a payment from the plaintiff.

(9) On 1 0/16/97 the defendant recorded the plaintiff's timely filing of objections to offset for administrative review of the record and relevant evidence

(10) The plaintiff did not complete and submit the loan discharge applications supplied by the Hearings Branch under cover of a 10/30/97 letter.

(11) The plaintiff sent the defendant's Hearings Branch a follow-up letter that included declining to submit a discharge application and advising that he disputed having received the alleged loan that was recorded as received on 4/3/98.

(12) The defendant referred claim #G199309030022801 to agency #AT522, OSI/A.M. Miller & Associates, Inc. ("OSI"), on 7/20/98 and accepted its return on 10/2/99 without that agency having collected a payment.

(13) The defendant referred claim G199309030022801 to agency #528 (Van Ru) on 10/24/99 and accepted its return on 1/27/00 without that agency having collected a payment.

(14) During the period it held the referral of claim #G199309030022801, Van Ru recorded the receipt of multiple disputes from the plaintiff.

(15) As a result of receiving disputes from the plaintiff, Van Ru neither suspended collection activities nor provided a single document as verification of debt to the plaintiff prior to returning the referral to the defendant on 1/27/00.

(16) The defendant referred claim G199309030022801 to agency #524 (Pioneer) on 9/16/00 and accepted its

return on 1/23/01 without that agency having collected a payment.

(17) Pioneer recorded the receipt of written dispute from the plaintiff, but neither sent verification of debt nor suspended collection activities prior to returning the referral to the defendant on 1/23/01, upon the plaintiff's filing suit.

5. PENDING MOTIONS

The defendant's October 1, 2001 Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and the plaintiff's November 20, 2001 Opposing Brief is the sole matter pending at the deadline for filing this Final Pretrial Order.

6. WITNESSES

a. Non-expert witnesses:

(1) to be called by the plaintiff and who will be present at trial:
Dani B. Edwards (of initial disclosure), to testify on communications between the parties personally witnessed since meeting the plaintiff in 1991 and, particularly as primary family/household record keeper since 1995, about the events and actions taken on the plaintiff's part in this matter since the family relocation to Colorado.

(2) to be called by the plaintiff who may be present at trial if the need arises: None.

(3) for whom the plaintiff expects to present testimony by means of a deposition: None.

(4) to be called by the defendant and who will be present at trial:
1. Glenda Rasca, Travel and Trade Career Institute, Associate Director 3635 Atlantic Avenue, Long Beach, CA Ms. Rasca will testify regarding Plaintiff's enrollment at TTCI, as well as the payment of his tuition and fees through Pell Grant checks signed for by Plaintiff.
2. Nicholas Navarro, Senior Loan Analyst, U.S. Department of Education 50 United Nations Plaza -

Region IX, San Francisco, CA 94102-4987 Mr. Navarro will testify regarding Plaintiff's loan history

(2) to be called by the defendant and who may be present at trial if the need arises:

1. Diane Spadoni, Regional Director, Debt Collection Service Department of Education, Chicago, IL Ms. Spadoni will testify regarding correspondence she had with Plaintiff regarding Plaintiff's loan.

(3) for whom the defendant expects to present testimony by means of a deposition: None

b. Expert witnesses:

(1) to be called by the plaintiff: None.

(2) to be called by the defendant and who will be present at trial: None.

7. EXHIBITS

a. List of Exhibits:

(1) Plaintiff:

1. Plaintiff's Complaint Exhibits A, D, E, F, G, H, I, J, K, L, M and N
2. 9/5/97 Request for Review form blank (11/20 Opposing Br. Encl. 3)
3. Plaintiff's Fed.R.Civ.P. 26(a)(1) #5, 8, 10, 12, 14, 16, 25, 28 & 75
4. Def. Fed.R.Civ.P. 26(a) list of initial disclosures, §(1)(B)A Exhibits 1-8, §(1)(B)B Exhibit 1, and §(1)(B)C Exhibits 1-4, 11, 13
5. Defendant's reports of CSAC reviews dated 7/10/92, 6/10/94 and 8/14/98
6. Def. production of Records Dispositions Schedules 10/99, Part 10, Item 17
7. Defendant's letters regarding TTCI review issues dated 6/13/00 and 9/12/00
8. Def. specimen letters sent pre-1996, production of US000047-48 & 59-68
9. Def. specimen letters sent post-1995, production of US000029-59

10. Discovery interrogatories: 2, 3, 4, 8, 10, 11, 12, 16, 19, 20, 22-29, 32, 35-38, 48 & 49
11. Discovery admissions: 2, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 20, 21, 22, 24, 26, 34, 35
12. Discovery requests for production: 1-9, 11, 12, 16
13. Plaintiff's California residence Rental Agreement 7/11/92 (supplementing Complaint Exhibit N as to duration of Previous Address shown) disclosed via fax 1/4/02
14. Gen. counsel 5/31/01 letter w/legible Note, pl. rec'd from def. counsel on 6/6/01
15. Def. legible TTCI Ck#4086 disclosed by def. counsel 11/16/01 (re: US000004)
16. Def. legible TTCI Ck#4136 disclosed by def. counsel 11/16/01 (re: US000005)
17. Def. legible TTCI Ck#4137 disclosed by def. counsel 11/16/01 (re: US000006)
18. Def. legible half- TTCI Contract disclosed by def. counsel 11/16/01 (re: US000007)
19. Def. legible TTCI Record Card disclosed by def. counsel 11/16/01

(2) Defendant:

1. Application for California Guaranteed Student Loan dated May 6, 1985
2. Promissory Note and Disclosure Statement dated June 17, 1985
3. GSL Specific Screen (R107 Screen and Explanatory Sheet) for the loan account of Bruce Edwards
4. Letter History Screen (L106 Screen) for the loan account of Bruce Edwards
5. Collector Note Pad (L102 Screen) for the loan account of Bruce Edwards
6. Account Transaction Screen (R103 Screen) for the loan account of Bruce Edwards
7. Research Account Screen (R101 Screen) for the loan account of Bruce Edwards
8. Rehabilitation and Consolidation Screen (L130 Screen) for the loan account of Bruce Edwards
9. Student Enrollment Agreement dated May 7, 1985

(3) Other parties: None.

b. Copies of listed exhibits were provided to opposing counsel and any pro se party no later than five days after the Final Pretrial Conference. The objections contemplated by Fed. R. Civ. P. 26(a)(3) shall be filed with the clerk and served (by hand delivery or facsimile) no later than 11 days after the exhibits were provided.

8. DISCOVERY

Discovery has been completed.

9. SPECIAL ISSUES

a. Whether a Federal agency's delay until all reasonable expectation of the preservation of a complete record related to an alleged financial transaction has passed, before first initiating an administrative collection activity that is actionable/reviewable outside its own administrative processes, should prohibit presumptions in favor of that Federal agency with regard the existence and contents of material documents and records not obtained or preserved to support the claim. (See Complaint #29)

b. Whether the lifting of the statute of limitations for the collection of student loans, under which the defendant accepted CSAC's assignment of the 1985 First Independent Trust note for payment of the 1987 Bank of America default claim, relieved the defendant from showing the consideration specified in that promissory note presented as "verification" that a loan contract resulted in the defendant's claim. (See Complaint #36a)

c. Defendant concedes that this Court has jurisdiction under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and the Higher Education Act, 20 U.S.C. § 1082. Defendant contends the remaining jurisdictional bases asserted by Plaintiff in the Proposed Pretrial Order were not pled in the complaint. Plaintiff contends that they were not cited, but were included in the pleading (i.e., in Complaint #1).

10. SETTLEMENT

The undersigned counsel for defendant and the pro se plaintiff hereby certify that:

a. A settlement conference was held in the chambers of Magistrate Judge Michael J. Watanabe commencing at 1:30 p.m. on January 9, 2002..

b. The participants in the settlement conference were Bruce Edwards, plaintiff pro se, and Peter Krumholz, Assistant United States Attorney, as counsel appearing for the defendant.

c. The parties were promptly informed of all offers of settlement.

d. As of the date of this document, counsel for the defendant and pro se plaintiff do not intend to hold a future settlement conference, but neither party is refusing to do so.

e. It appears from the discussion by defense counsel and the pro se plaintiff that there is no possibility of settlement.

f. No other settlement conference has been scheduled.

g. The parties considered ADR in accordance with Local Rule 16.4A.

11. OFFER OF JUDGMENT

Counsel for the defendant and the pro se plaintiff acknowledge familiarity with the provision of rule 68 of the Federal Rules of Civil Procedure (Offer of Judgment). Counsel has discussed it with the clients against whom claims are made in this case.

12. EFFECT OF FINAL PRETRIAL ORDER

Hereafter, this Final Pretrial Order will control the subsequent course of the action and the trial, and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. This Final Pretrial Order supersedes the Scheduling Order. In the event of ambiguity in any provision of this Final Pretrial Order, reference may be made to the record of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

13. TRIAL AND ESTIMATED TRIAL TIME; FURTHER TRIAL PREPARATION PROCEEDINGS

Trial is to the court and is scheduled to take place in the District of Colorado United States Courthouse, Room C-159, on May 8 and May 9, 2002, commencing at 9:00 a.m. on each of those days. A final Trial Preparation Conference is scheduled at the same location at 10:30 a.m. on April 22, 2002.

DATED this *31*st day of January 200*2*.
BY THE COURT
s/*Boyd N. Boland*
Boyd N. Boland
United States Magistrate Judge

APPROVED:

s/*Bruce Edwards*
Bruce Edwards, Plaintiff pro se
1001 Emporia St., Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

s/*Peter Krumholz*
Peter Krumholz, Assistant US Attorney for Defendant
1225 17th Street, # 700, Denver, CO 80202
(303) 454-0100

#85 Order (Trial Vacatur) 3/6/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado MAR 6 2002 James R. Manspeaker, Clerk By s/"SM"(?)}

Civil Action No. 01-BB-36
BRUCE EDWARDS,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

ORDER

The plaintiff filed his Complaint on January 8, 2001. The allegations in the Complaint arise from the defendant's attempts to collect a student loan debt from

the plaintiff. Pursuant to Administrative Procedure Act (the "APA"), the Complaint seeks judicial review of the defendant's final agency decision regarding the validity of the plaintiff's student loan debt. The defendant filed a Motion for Summary Judgment, or in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) on October 1, 2001. The plaintiff filed a Response in Opposition to Motion to Dismiss on November 20, 2001.

"Reviews of agency action in the district courts must be processed *as appeals*." Olenhouse v. Commodity Credit Corporation, 42 F.3d 1560, 1580 (10th Cir. 1994) (emphasis in original). The Tenth Circuit views motions for summary judgment as "conceptually incompatible with the very nature and purpose of an appeal" and explicitly prohibits the use of such motions upon judicial review of agency actions under the APA. Id. The Tenth Circuit's rationale for prohibiting motions for summary judgment lies in the potential disadvantage to the appellant which could result from allowing the appellee to define the issues on appeal, and which could result from the court relying on evidence outside the administrative record. Id.

In light of the mandates of Olenhouse, and in light of the procedural posture of this case,

IT IS ORDERED that a status conference is set in place of the final trial preparation conference on **April 22, 2002, at 10:30 a.m.,** to discuss the necessity for supplemental briefing, if any, and to discuss the manner in which this case will proceed.

IT IS FURTHER ORDERED that the trial in this matter, set for May 8, 2002, is VACATED.

A copy of Olenhouse v. Commodity Credit Corporation, 42 F.3d 1560 (10th Cir. 1994), is attached to this Order.

DATED March 5, 2002.

BY THE COURT:

s/*Boyd N. Boland*

United States Magistrate Judge

* * *[attached order Olenhouse copy]

#87 Order (Deny District Judge Review) 3/15/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

{Filed United States District Court Denver, Colorado MAR 15 2002 James R. Manspeaker Clerk s/GM}

Civil Action No. 01-BB-36
BRUCE EDWARDS,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

ORDER

This matter is before me on the **Plaintiff's Fed. R. Civ. P. 72(a) Objections to Order filed March 6, 2002** (the "Objections"), filed March 13, 2002. The plaintiff seeks review by a district judge of my order of March 6, 2002, vacating the trial and setting a status conference to discuss further proceedings consistent with Olenhouse v. Commodity Credit Corp., 42 F.3d 1560 (10th Cir. 1994). Rule 72(a), Fed. R. Civ. P., has no application to this case, however, where the parties have consented to the exercise of jurisdiction by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). Where a magistrate judge is proceeding under consent jurisdiction, review is directly to the appropriate circuit court of appeals. 28 U.S.C. § 636(c)(3). My order of March 13, 2002, is not a final order and is not immediately appealable, however.

IT IS ORDERED that the Motion is DENIED.

DATED March 14, 2002.

BY THE COURT:

s/*Boyd N. Boland*
United States Magistrate Judge

#92 Order (re 28 U.S.C. § 636(c)(4)) 4/5/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE

{Filed United States District Court Denver, Colorado APR 5 2002 Jam s R. Manspeaker, Clerk By s/"SM"(?) Dep Clerk}

Civil Case No. 01-BB-36
BRUCE EDWARDS,
Plaintiff,

v.

U. S. DEPARTMENT OF EDUCATION,
Defendant.

ORDER

This matter is before me upon the motion of plaintiff Bruce Edwards, Pro se, to withdraw reference pursuant to 28 U.S.C. § 636(c)(4). Pursuant to 28 U.S.C. § 636(c) and D.C.COLO.LR 72.6, I entered my 28 U.S.C. § 636(c) order of reference based upon the parties May 3, 2001 consent. In accordance with D.C.COLO.LR 72.6, Magistrate Judge Boyd N. Boland was drawn anonymously to exercise the § 636(c) jurisdiction.

28 U.S.C. 636(c)(4) provides, "The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection." Plaintiff's reason, procedural in nature, is that the case should have been earlier identified by the Clerk of the Court, the magistrate judge, or defendant as an Administrative Procedure Act matter. Plaintiff complains about the requirement that he appear at a status conference, the defendant's adequate representation by government counsel, and that the result of the status conference will not be subject to higher authority. Of course, 28 U.S.C. 636 and this court's local rule affords plaintiff a remedy of appellate review.

Plaintiff makes no showing of extraordinary circumstances such as undue delay, prejudice to the parties,

coerced consent, or bias and prejudice of the magistrate judge. Accordingly,

IT IS ORDERED that plaintiff's motion to withdraw reference is DENIED.

BY THE COURT:

s/*Lewis T. Babcock*

Lewis T. Babcock, Chief Judge

DATED: April 4, 2002

#95 Order (Briefing Schedule) 4/23/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

{Filed United States District Court Denver, Colorado APR 23 2002 James R. Manspeaker, Clerk By s/*GM* Deputy Clerk}

Civil Action No. 01-BB-36
BRUCE EDWARDS
Plaintiff,
v.
UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

ORDER

The parties appeared this morning for a status conference. I entered rulings on the record during that conference which are incorporated here. In summary and for the reasons stated on the record this morning:

IT IS ORDERED that the following schedule is established:

Designation of the record (by the Department of Education): **May 15, 2002**

Objections and supplemental designation of the record (by Mr. Edwards) **June 7, 2002**

Objections to supplemental designation: **Jule**[sic] **21, 2002**

Opening brief (by Mr. Edwards): **July 31, 2002**

Response brief (by the Department of Education): **August 30, 2002**

Reply brief (by Mr. Edwards): **September 16, 2002**

Argument (limited to 15 minutes per side):

October 28, 2002, at 10:30 a.m

The opening brief and the response brief shall be limited to 20 pages each. The reply brief is limited to seven pages.

Also pending is the defendants **Motion for Summary Judgment Or, In the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)** (the "Motion for Summary Judgment"), filed October 1, 2001. Consistent with my Order of March 6, 2002, and in view of this order:

IT IS FURTHER ORDERED that the Motion for Summary Judgment is DENIED WITHOUT PREJUDICE. The parties are free to raise all of the arguments made in connection with the Motion for Summary Judgment in their briefs submitted in connection with my review of the administrative action.

DATED April 22, 2002

BY THE COURT:

s/*Boyd N. Boland*

United States Magistrate Judge

#101 Order (Denying Reassignment) 5/15/02

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

{Filed United States District Court Denver, Colorado
MAY 15 2002 James R. Manspeaker Clerk}

Civil Action No. 01-BB-36
BRUCE EDWARDS,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

ORDER

This matter is before me on the following motions:

(1) Plaintiffs **Motion Pursuant to D.C.COLO. LCivR 40.1E(3), for Designated Administrator of Agency Action Appeals, Senior Judge John L. Kane,**

to Vacate Order Filed April 23, 2002 (the "Motion to Vacate Order"), filed April 29, 2002; and

(2) Plaintiff s **Motion to End Delay in Conversion to Appellate Processing for Order filed March 6, 2002** (the "Motion for Reassignment"), filed May 15, 2002.

The Motion to Vacate Order is incomprehensible.

The Motion for Reassignment raises issues previously decided by me and by Chief District Judge Babcock in orders dated March 14, 2002, and April 4, 2002, respectively.

IT IS ORDERED that the Motion to Vacate Order and the Motion for Reassignment are DENIED.

DATED May 15, 2002

BY THE COURT

s/*Boyd N. Boland*

United States Magistrate Judge

#145-48 Transcripts[1] 1/5/04

Avery/Woods Reporting Service, Inc.
455 Sherman Street, Suite 250, Denver, CO 80203
303-825-6119 FAX 303-893-8305

#145 Tr. of #21 Scheduling Conf. 5/17/01

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[1] IN THE UNITED STATES DISTRICT COURT [1]
[2] FOR THE DISTRICT OF COLORADO
[3] Case No. 01-BB-36
[4] [5] BRUCE EDWARDS,
[6] Plaintiff,
[7] vs.
[8] U.S. DEPARTMENT OF EDUCATION,
[9] Defendant.
[10][11] Proceedings before BOYD N. BOLAND, United States [12] Magistrate Judge, United States District

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[1] NOTE: sense-altering errors shown in ***bold italic*** – actual dialog (from D. Colo. audio tapes) supplied by footnotes/petitioner's motion for corrections (entered 10th Cir. docket #20; referred to merits panel (*id.* #21), but denied in motions panel Dismissal; *see* Pet. App. 99)

Court for the [13] District of Colorado, commencing at 11:30 a.m., May 17, [14] 2001, in the United States Courthouse, Denver, Colorado.

[15][16] WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS [17] ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED...

[18] [19] APPEARANCES

[20] BRUCE EDWARDS, the plaintiff herein, appearing pro [21] se, via telephone.

[22] KENNETH R. BUCK, Assistant United States Attorney, [23] appearing for the defendant.

[24] [25] SCHEDULING CONFERENCE

[2][1] PROCEEDINGS

[2] (Whereupon, the within electronically recorded [3] proceedings are herein transcribed, pursuant to order of [4] counsel.[2])

[5] THE COURT: (Recorder turned on)...Boyd Boland, [6] and we are here on Case 01-BB important that you make a [7] note of that. You have to put two Bs within the number; [8] otherwise, there's confusion. There's Judge Babcock, the [9] chief district judge, and there's - and he is just one B, [10] and then there is me and I need two Bs, so be sure to put [11] that in future filings.

[12] MR. EDWARDS: Will do.

[13] THE COURT: Okay.

[14] MR. EDWARDS: 01-BB?

[15] THE COURT: -36.

[16] MR. EDWARDS: 36. Got it.

[17] THE COURT: Okay. And we are here for a scheduling [18] conference. Mr. Edwards is proceeding pro se, and he's on [19] the phone. And for the Department of Education?

[20] MR. BUCK: Ken Buck, Assistant United States [21] Attorney.

[22] THE COURT: Thank you, Mr. Buck.

[23] Okay. I've been through the draft scheduling [24] order. And there's a number of things that I need –

---

[2] party, Mr. Bruce Edwards [*pro se*, no counsel]

there [25] are a number of things that we need to talk about. If I **[3]**[1] skip over anything either of you want to mention, just jump [2] in and we'll go back to it. [3] It appeared to me that the first thing we need to [4] address is on page 2, the undisputed facts. I take it that [5] there are none at this time, is that right, Mr. --

[6] MR. EDWARDS: That's correct.

[7] THE COURT: -- Edwards?

[8] MR. EDWARDS: We have not come to any agreement on [9] undisputed facts.

[10] MR. BUCK: That's correct.

[11] THE COURT: Okay. I'll just insert "none." [12] And on the computation of damages, I know that you [13] may have additional damages that come to light as you [14] prepare the case, but do you know the amount of the -- I [15] don't know if "offset" is the right word -- the amount that [16] was seized?

[17] MR. EDWARDS: The amount that was seized?

[18] THE COURT: Yeah.

[19] MS. EDWARDS: (Inaudible)

[20] MR. EDWARDS: It was $234 and -- $234.32.

[21] THE COURT: And do you know -- and how much does [22] the government claim you owe on this promissory note?

[23] MR. EDWARDS: They show --

[24] MR. BUCK: Maybe I can help, Your Honor.

[25] THE COURT: Sure.

[4][1] MR. BUCK: I think the amount is somewhere over [2] $5,000 right now. It's -- a $2500 loan was the principal [3] amount, and with interest it is a little bit over $5,000.

[4] THE COURT: Okay. So under the computation of [5] damages, would it be fair to say that the plaintiff disputes [6] the promissory note in the amount of more than $5,000?

[7] MR. BUCK: Yes.

[8] THE COURT: That defines the scope of the damages. [9] Mr. Edwards, does that sound right to you?

[10] MR. EDWARDS: Okay. Now, ***assuming***[3] -- I just got a [11] new --[4]the latest one I ***had***[5] the U.S. 81 [illegible]ows $6534. Do you [12] put that?

[13] THE COURT: Okay.

[14] MR. EDWARDS: That's -- that's only a -- one of-- [15] one of the disclosures that ***the***[6] Department of Education, [16] U.S. 00081.

[17] THE COURT: Okay. And you said that was $6,534

[18] MR. EDWARDS: ***Yeah, it was 6650 (sic)***[7], yes.

[19] THE COURT: Okay. (Pause) What's the right word? [20] It's not "seized," but --

[21] MR. BUCK: It's a tax offset.

[22] THE COURT: Offset.

[23] MR. EDWARDS: Yeah. Correct.

[24] THE COURT: Okay. So what I've written here, Mr. [25] Edwards, is that you dispute the validity of the debt in the **[5]**[1] amount of $6,534.56 including an offset of $234.32, is that [2] fair -- or accurate?

[3] MR. EDWARDS: ***That's***[8] under Title V?

[4] THE COURT: Uh-huh.

[5] MR. EDWARDS: I have a ***HO***[9] actual--there's a [6] statement of Title V, Section 4(a). It says actual damages [7] sustained by the individual as a result of the refusal or [8] failure ***(inaudible)***[10] a person ***shall be***[11] entitled to recovery [9] ***if he***[12] receives less than of the sum of a thousand dollars. [10] I want to add that in as well.

[11] THE COURT: Okay.

[12] MR. EDWARDS: My question to you, Judge, is that

---

[3] "they're showing"

[4] ", or"

[5] "have,"

[6] "is from"

[7] "And 56 cents"

[8] "Okay, and uh -- and"

[9] "-- it shows"

[10] ", but in no case"

[11] "so"

[12] no words between "recovery" and "receives"

[13] for each refusal or just in total?
[14] THE COURT: Well, you know, -I'm not familiar with
[15] the statute, so I don't know.
[16] MR. EDWARDS: Okay.
[17] THE COURT: So I'll put in statutory damages of not
[18] less than a thousand dollars.
[19] MR. EDWARDS: Okay. Then we'll get a total.
[20] THE COURT: Okay. And is the government claiming
[21] any –
[22] MR. BUCK: No, Your Honor. Other than the -- ***not***[13]
[23] ***on***[14] the promissory note but we don't --that's not part of [24] this action. We have ***counterclaims***.[15]
[25] THE COURT: Right. Okay. **[6]**[1] All right. On page 3, under part 5(d), it talks [2] about the disclosures. Have the disclosures been made and [3] are there any problems? Have you received from Mr. Buck a [4] list of people knowledgeable and a list of any documents [5] that may relate to this case, Mr. Edwards?
[6] MR. EDWARDS: In the disclosures made to me?
[7] THE COURT: Right. Did you get disclosures from [8] Mr. Buck?
[9] MR. EDWARDS: ***I guess***[16] I did receive disclosures [10] from Mr. Buck.
[11] THE COURT: And do you have any problem with what [12] he's disclosed?
[13] .MR. EDWARDS: Yes. I --there was a --my first [14] disclosure that I ***had before***[17] was a copy of the ***(inaudible)***[18] [15] check ***(several words inaudible)***,[19] and ***I received***[20] that.
[16] THE COURT: Okay.
[17] MR. BUCK: Maybe I could clarify, Your Honor.

---

[13] "amount"
[14] "of"
[15] "a counterclaim"
[16] "Uh, yes,"
[17] "asked for"
[18] "loan"
[19] "or electronic funds transfer;"
[20] "I have not received"

[18] THE COURT: Sure.

[19] MR. BUCK: I've made the Rule 26(a) disclosures. [20] In addition, we've started some informal discovery. And the [21] plaintiff has asked the government for certain things in [22] informal discovery, and I have not completed that phase. [23] But I think if we just focus on the 26(a) disclosures, Mr. [24] Edwards has received those from the government.

[25] THE COURT: Okay. So you got --Mr. Edwards, is it **[7]**[1] true that you got a list of people knowledgeable about the [2] case and a list of documents which may relate to the case?

[3] MR. EDWARDS: Yes, that is correct.

[4] THE COURT: Okay. And with respect to that list, [5] does it seem to you to be complete? Do you have any issues [6] with that?

[7] MR. EDWARDS: Hold on, please. I'm looking at the [8] --Judge, would it be possible if ***they***[21] could listen ***to me***[22] [9] ***and my***[23] wife, Dani Edwards, ***you know***,[24] is taking notes for me [10] as I'm speaking but -

[11] THE COURT: Would it be possible if what?

[12] MR. EDWARDS: If my wife, Dani Edwards, could [13] listen in? She is taking notes for me and I'm--

[14] THE COURT: Yeah, she may listen in.

[15] MR. EDWARDS: She's ***providing***[25] things for me.

[16] THE COURT: Okay. Sure, that's fine.

[17] MS. EDWARDS: Good morning, Your Honor.

[18] THE COURT: Good morning. I was asking Mr. Edwards [19] if he had received the list of people and documents provided [20] by Mr. Buck and if he had any issues with that.

[21] MS. EDWARDS: Yes, he did receive them but they -- [22] a single disclosure package that included a list of people [23] and --

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[21] "Dani"

[22] "in?"

[23] "My"

[24] "she, uh"

[25] "also finding"

[24] THE COURT: Um-hum.
[25] MS. EDWARDS: -- the items?
[8][1] THE COURT: All right.
[2] MS. EDWARDS: And he -- as he just indicated, the [3] one thing that we've been asking for all along has been the [4] document of disbursal --
[5] THE COURT: All right.
[6] MS. EDWARDS: -- because it hasn't shown yet that [7] the money --that the lender disbursed the money and that's [8] what he's been asking for all along.
[9] THE COURT: All right. Mr. Buck, are you going to [10] provide that without the necessity of a formal request?
[11] MR. BUCK: Yes, Your Honor.
[12] THE COURT: Okay.
[13] MR. BUCK: I will provide a response to that.
[14] THE COURT: Okay.
[15] MR. BUCK: I'm not sure if the government still has [16] that document but I will cause the Department of Education [17] to conduct a search.
[18] THE COURT: All right. So, you -- so Mr. Buck has [19] indicated that he's looking into that and he'll respond to [20] your request.
[21] MS. EDWARDS: Okay.
[22] THE COURT: And, Mr. Buck, have you gotten the [23] plaintiff's disclosures and are there any issues on your [24] part?
[25] MR. BUCK: I have received them and no issues, Your **[9]**[1] Honor.
[2] THE COURT: Okay.
[3] MS. EDWARDS: May I bring up something else --
[4] THE COURT: Yes...
[5] MS. EDWARDS: -- that doesn't seem to be answered [6] yet?
[7] THE COURT: Okay.
[8] MS. EDWARDS: In the answer to the complaint, there [9] were at least four items where the ED's answers did not [10] match what was asked for in the complaint, and that hasn't [11] --those haven't been addressed, the major

one being ***a***[26] [12] request for review. There's nowhere in the answer that ED [13] admits receiving that request ***as***[27] not having issued a written [14] determination.

[15] THE COURT: What -- do you know what -

[16] MS. EDWARDS: It was complaint number 22 and 22(a) [17] and 23. In 22, the request for review ***for***[28] the plaintiff was [18] brought up, and the answer talks about an unauthorized [19] signature application which happened later, but it doesn't [20] address that they received -- it doesn't admit or deny that [21] they received the request for review.

[22] THE COURT: So this is -- I'm sorry, this is 22(a)?

[23] MS. EDWARDS: 22 and 22(a).

[24] THE COURT: All right. Hold on just a minute. [25] (Pause) And what is it specifically that you are **[10]**[1] looking for?

[2] MS. EDWARDS: In 22, the complaint was that Bruce [3] had submitted a request for review. And the answer for 22, [4] they admit --they actually deny that he checked off [5] anything, ***an***[29] unauthorized signature application. Those [6] applications were sent in response to that request for [7] review.

[8] THE COURT: Well, I don't see -- in 22 or 22(a), I [9] don't see anything about a request for review. Where are [10] you reading?

[11] MR. BUCK: In the complaint, Your Honor.

[12] THE COURT: Yes.

[13] MR. BUCK: It's -- the first line is on the request [14] for review.

[15] THE COURT: Oh, I'm sorry. Okay on the request for [16] review form.

[17] MS. EDWARDS: That Bruce had indicated a couple of [18] objections on that.

[19] THE COURT: Yes.

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[26] "the"

[27] "and"

[28] "from"

[29] "on"

[20] MS. EDWARDS: But ED's answer is regarding an [21] application, an unauthorized signature application. Those [22] applications were sent in response to the request for [23] review.

[24] THE COURT: All right.

[25] MS. EDWARDS: ED isn't addressing the request for **[11]**[1] review, whether it was received or not. In 22(a) there was [2] a phone call follow-up from the hearings branch on the [3] request for review. In the answer, ED addresses a telephone [4] inquiry a year ***alter***[30] from a public inquiry contractor.

[5] THE COURT: Let me --let me interrupt for just a [6] minute. Have you had an opportunity to raise these concerns [7] with Mr. Buck?

[8] MS. EDWARDS: Well, Mr. Buck, we mentioned in the [9] scheduling --the prescheduling conference, that there was [10] some answers on the --that there were some answers that [11] didn't match the complaint questions.

[12] THE COURT: And have you gone over in the same kind [13] of detail you just did?

[14] MS. EDWARDS: That was it.

[15] THE COURT: You haven't?

[16] MS. EDWARDS: No, we have not gone over it [17] previously with him, what those were.

[18] THE COURT: Okay.

[19] MS. EDWARDS: But we did mention there were [20] problems with it.

[21] THE COURT: Well, here's what I'd like you to do. [22] I'd like you and Mr. Buck to discuss this and see if you can [23] reach an agreement before --reach an agreement on the [24] issue. And then if you cannot, you can file a motion asking [25] that the government admit or deny with specificity. But my **[12]**[1] guess is that if you talk to Mr. Buck and try to work this [2] out, you'll be able to reach an agreement of some kind.

[3] MS. EDWARDS: All right. Very good.

[4] .THE COURT: Okay. All right. My next issues are [5]

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[30] "later"

on page 4, part 7, the deadline to join parties and to amend [6] pleadings. It indicates that Mr. Edwards is going to seek [7] leave to amend, is that right?

[8] MR. EDWARDS: Yes, that is right.

[9] THE COURT: And what do you want to add? What is [10] it you need to do by amendment?

[11] MS. EDWARDS: Well, Your Honor, part of the [12] amendment was that the -- the jurisdiction issues that -- [13] that were raised were kind of clumsily handled in the [14] complaint and ***why***[31] to be specific that the jurisdiction would [15] be about the review of the records.

[16] THE COURT: Okay.

[17] MS. EDWARDS: And there were a few things that [18] ended up looking like they're requests for -- addressed to [19] tort issues that wouldn't -- that shouldn't come under this.

[20] THE COURT: Okay.

[21] MS. EDWARDS: And can be removed. And then in the [22] one instance Bruce has been for seven years saying he didn't [23] attend the school and disclosures showed that he -- that the [24] school has records that did attend but didn't complete it.

[25] THE COURT: Uh-huh.

[13][1] MS. EDWARDS: So we want to amend that to – that [2] he didn't complete the school rather than didn't attend it.

[3] THE COURT: All right. When would you expect to be [4] able to file your motion to amend?

[5] MS. EDWARDS: ***For***[32] --the one thing we're waiting [6] for is disclosure that --a document that shows that the [7] lender actually made the --the loan -- the endorsement on [8] a loan check --

[9] THE COURT: Uh-huh.

[10] MS. EDWARDS: --for the authorization. Until we [11] have that, Bruce --Bruce's stance has been that he does[sic] [12] remember that event, and he still doesn't.

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[31] "we wanted"

[32] "Well the,"

But if we amend [13] the complaint, and he's still claiming that -- that ED has [14] not been shown they have it, we'd like to know is there a [15] document that shows that happened or not yet?

[16] THE COURT: Well, here's what I'm going to do. I'm [17] going to grant you six weeks to seek leave to amend. So [18] hold on just a minute. And in that time, maybe you can get [19] that document***s***.[33] If you can't, then you can file a motion to [20] extend the deadline for leave to amend and say why you need [21] additional time.

[22] MS. EDWARDS: All right. Very good.

[23] THE COURT: One, two, three, four, five, six –so [24] I'm going to say June 29th is the deadline to -- for ***need***[34] to [25] amend -- or to move to amend.

[14][1] MS. EDWARDS: And that is to -- is it a motion to [2] amend or also the amendment?

[3] THE COURT: Both. A motion -- normally the motion [4] to amend includes a copy of the proposed amendment attached.

[5] MS.EDWARDS: All right. Very good.

[6] THE COURT: Now, there were early motions to add [7] you, Mrs. Edwards, as a plaintiff, is that -- but those have [8] been dealt with, is that correct?

[9] MS. EDWARDS: Yes, sir, with Judge Watanabe.

[10] THE COURT: Okay. A discovery cutoff date. I'm [11] sorry, Mr. Buck?

[12] MR. BUCK: Your Honor, how long will we have to [13] answer after that amended complaint is filed?

[14] THE COURT: Well, I'll order a response to the [15] motion to amend. It'll give you two weeks.

[16] MR. BUCK: Okay.

[17] THE COURT: Let's -- I think it might be helpful to [18] sort of think about when you want to try this case and then [19] move backwards for discovery cutoffs and dispositive motions [20] and that sort of thing. Do you have in mind when you would [21] like to set this case for

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[33] "document"

[34] "leave"

trial?
[22] MR. EDWARDS: I don't have a date ***that's***[35] --
[23] THE COURT: All right. Well, we'll just do it in [24] the normal way. How long do you think you'll need to [25] discovery, take depositions, serve produc' -- requests for **[15]**[1] documents, and that sort of thing? Ordinarily, I'll grant [2] up to six months, but I certainly will give a shorter period [3] of time if you want.
[4] MR. EDWARDS: We should be ready with those issues [5] by June 1st --
[6] MS. EDWARDS: We could submit the initial request [7] or the request that results from this ***meeting first?***[36]
[8] THE COURT: Okay. So then the government will have [9] 33 days to respond, so that puts us into July. So if I set [10] an August 31st discovery cutoff date, that would mean that [11] you have to serve any discovery by the end of July and take [12] all of your depositions and have all of that done by August [13] 31st. Does that give you enough time to prepare your case?
[14] MR. EDWARDS: Yes, it does.
[15] THE COURT: Mr. Buck?
[16] MR. BUCK: Yes, Your Honor.
[17] THE COURT: All right. So I'll set a discovery [18] cutoff of August 31st, 2001. And a dispositive motion [19] deadline a month later, October 1st, 2001. No experts are [20] expected, is that right?
[21] MR. EDWARDS: That is correct.
[22] MR. BUCK: That's correct, Your Honor.
[23] THE COURT: All right. [24] (Pause) On the -- on page 5, the interrogatory and [25] requests for production schedule, it's my practice simply to **[16]**[1] say discovery requests must be served so the answers are due [2] by the discovery cutoff date. So that means if you're going [3] to serve a document request, you'll have to serve it by July [4] 27th or so. Does that sound okay?
[5] MR. EDWARDS: Yes, it does. Thank you.

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[35] "set, sir -- um, its --"
[36] "meeting by June first."

[6] MR. BUCK: Yes, Your Honor.
[7] THE COURT: All right. [8] (Pause) Okay. A limit on the number of [9] depositions. Mr. Edwards, how many depositions do you want [10] to take?
[11] MS. EDWARDS: Your Honor, depositions are like [12] personal interviews with witnesses?
[13] THE COURT: Well, they're more than personal [14] interviews. It is where there is a court reporter present [15] and each party gets to ask questions, and they are taken [16] down by the court reporter verbatim, and then they become [17] sworn testimony which can be used at trial if the witness is [18] not available, for example.
[19] MS. EDWARDS: We -- Mr Buck, we had discussed this [20] -- we thought we would avoid depositions, if possible. [21] Okay?
[22] MR. BUCK: Right. I think from the government's [23] perspective, we'd do less than five, Your Honor. So if you [24] want to set a maximum of five, I don't think there's any [25] problem with that.
[17][1] THE COURT: Okay. Do you expect to do more than [2] five?
[3] MR. EDWARDS: ***(Inaudible).***[37]
[4] THE COURT: Okay. I'll limit depositions to five [5] per side. It doesn't mean you have to take them, it just [6] means that you can take up to that many. [7] Length of depositions, seven hours without leave [8] of the Court sufficient?
[9] MR. BUCK: Yes, Your Honor.
[10] MR. EDWARDS: ***(Inaudible).***[38]
[11] THE COURT: And no deposition can go more than a [12] day, seven hours, without my permission.
[13] MR. EDWARDS: Okay.
[14] THE COURT: Interrogatories. Those are written [15] questions. How many written questions do you want to serve [16] on the government?
[17] MS. EDWARDS: So far we have -- well, Your Honor,

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[37] "No."
[38] "Seven hours."

[18] ***we can***[39] count -- if you have one question and it's broken [19] into several parts, does ***that count***[40] as a question?

[20] THE COURT: Well, that's a tricky question. If it [21] all deals with the same topic. So, for example, you ask the [22] question: Did you attend the meeting on December 1st and who [23] was there, where was it, how long did it last --

[24] MS. EDWARDS: Okay.

[25] THE COURT: -- in my view, that's only one question **[18]**[1] because all you're doing. is asking about one meeting and [2] you're telling the person the kind of information you want. [3] But if you ask the question: Did you attending meetings on [4] December 1st, November 3rd and October 2nd and those other [5] things, then that's three questions because that's three [6] different meetings.

[7] MS. EDWARDS: Well, we have --I would say at the [8] most --either way, at the ***most***,[41] we have about 33 [9] interrogatory questions.

[10] THE COURT: Okay.

[11] MS. EDWARDS: Some of them having to do with. [12] policies and procedures, and then some having to do with the [13] specific handling of this account.

[14] THE COURT: All right. So if I set it at a maximum [15] of 50, does that give you plenty?

[16] MS. EDWARDS: That would sound like plenty.

[17] THE COURT: Mr. Buck?

[18] MR. BUCK: That's fine.

[19] MS. EDWARDS: Does that include requests for [20] admissions?

[21] THE COURT: It does not .It's just [22] interrogatories.

[23] MS. EDWARDS: Okay.

[24] THE COURT: Now, production requests or requests

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[39] "do you"

[40] "that each count"

[41] "moment"

[25] for admission. Production requests[42] is a request for a **[19]**[1] document. A request for admission is admit or deny A or B [2] or C. How many document requests do you want, Mr. Edwards?

[3] MR. EDWARDS: Document requests?

[4] THE COURT: Yes.

[5] MR. EDWARDS: Right now we're at 20.

[6] THE COURT: Okay. Is that enough or do you need [7] more than that?

[8] MR. EDWARDS: I would --***maybe 25***[43] to be safe.

[9] THE COURT: All right. Mr. Buck?

[10] MR. BUCK: Twenty-five is fine.

[11] THE COURT: All right. I'll allow 25 production [12] requests and 25 requests for admissions per side.

[13] MS. EDWARDS: Your Honor?

[14] THE COURT: Yes.

[15] MS. EDWARDS: Could we make that 35 requests for [16] admissions?

[17] THE COURT: All right. [18] (Pause) All right. Now I'm on part 5 -- H-5 on [19] that same page 5. Are there any other planning or discovery [20] matters we should take up?

[21] MR. BUCK: Your Honor, the only thing I can say is [22] that because of the logistics of getting a response from [23] Washington, D.C., and the documents being held in San [24] Francisco, I may be asking for an extension of time to [25] answer. And I just wanted the plaintiffs to realize that **[20]**[1] they may not be getting documents within 30 days, but I [2] would do my best to get those documents to them within 30 [3] days.

[4] THE COURT: Okay. Ordinarily a party has to [5] respond with documents within 30 days of the request. Mr. [6] Buck is simply saying he'll respond as quickly as he can, [7] hopefully within the 30 days, but it might be longer since [8] he has to coordinate with Washington and San Francisco.

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[42] singular, not plural

[43] "say 25 just"

[9] MR. EDWARDS: That sounds fair.
[10] THE COURT: Okay.
[11] MR. EDWARDS: Okay.
[12] THE COURT: All right. Length of the trial. How [13] long do you think the trial --two days and is there a [14] disagreement about whether it's to the Court or to a jury?
[15] MR. EDWARDS: We don't have any difficulty with [16] both of them.
[17] THE COURT: Okay. Do you think two days is enough?
[18] MR. EDWARDS: Yes, two days is enough.
[19] THE COURT: All right. Has anybody made a jury [20] demand?
[21] MR. BUCK: I don't know if it's in the complaint or [22] not.
[23] THE COURT: It's not in the complaint.
[24] MR. BUCK: I haven't made a jury demand and I don't [25] believe the plaintiffs have either.
[21][1] THE COURT: All right. So it's a two-day trial to [2] the Court. [3] (Pause) All right. If the two of you would make [4] a phone call in the next few days to Judge Watanabe to set [5] the matter for a settlement conference. Or, Mr. Buck, if [6] you just want to stop up there and then call Mr. Edwards to [7] clear a date, that would be fine too. Just see Judge [8] Watanabe for a settlement conference.
[9] MR. BUCK: Yes, Your Honor.
[10] MR. EDWARDS: Your Honor, what date was that?
[11] THE COURT: Well, Mr. Buck, will go up and --
[12] MR. BUCK: I'll probably try to do it by phone.
[13] THE COURT: All right. He'll just call you and try [14] to set a time to call Judge Watanabe's office and set a [15] settlement conference. He'll tell you what day.
[16] MR. EDWARDS: Okay.
[17] THE COURT: Judge Watanabe will set a date. [18] Okay. Dispositive motions are October 1st, so [19] let 's set a pretrial conference in early December. How [20] about Friday, December 7th, Pearl Harbor Day, at

11:30?
[21] MS. EDWARDS: ***(Inaudible)***[44]
[22] MR. BUCK: It's fine with the government, Your [23] Honor.
[24] THE COURT: Okay.
[25] MR. BUCK: Can the plaintiffs appear by phone or is **[22]**[1] that something that --
[2] THE COURT: Yes. That'll be fine.
[3] MR. EDWARDS: December 7th at 11:30?
[4] THE COURT: Right.
[5] THE COURT: Does that work?
[6] MR. EDWARDS: May I appear by phone. or do I have to [7] be in person?
[8] THE COURT: You may appear by phone.
[9] MR. EDWARDS: Thank you.[45]
[10] THE COURT: Does that work? Is that clear?
[11] MR. EDWARDS: Yes, sir..
[12] THE COURT: All right. [13] (Pause) All right. And then a trial date. Mr. [14] Buck, do you have a proposal?
[15] MR. BUCK: I don't, Your Honor.
[16] THE COURT: Mr. Edwards, do you have a time when [17] you'd like to try this case? It will take two days?'
[18] MS. EDWARDS: ***(Inaudible)***[46]
[19] MR. EDWARDS: ***How about (inaudible) on***[47] the [20] schedule? [21] (Pause. Colloquy out of range of microphone.)
[22] MR. EDWARDS: Does January 9th and 10th sound good [23] or is that too far?
[24] THE COURT: That's not too far, but I'm not [25] available then.
[23][1] MR. EDWARDS: Okay.
[2] THE COURT: Let me make a couple of proposals based [3] on my schedule and then --basically any days -- any two [4] days of the week of January 28th, February

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[44] "Friday the 7th?"
[45] ", sir."
[46] "See, we'll need your schedule." [Directed to Mr. Edwards]
[47] "Hold on, I have to look up"

4th or February [5] 11th.
[6] (Colloquy out of range of microphone)
[7] MR. EDWARDS: We're working on ***the (inaudible)***[48]
[8] right now.
[9] THE COURT: Okay.
[10] MR. EDWARDS: (Pause) Okay, Judge, if you will [11] pick ***a few***[49] days convenient to you and I'll work around that.
[12] THECOURT: Okay. Well, let's say, Mr. Buck, [13] February 4 and 5?
[14] MR. BUCK: Sounds great, Your Honor.
[15] THE COURT: All right. We'll set the case for [16] trial on February 4 and 5, 2002. [17] (Pause) And you'll get some instructions in the [18] mail about what needs to be done before that – immediately [19] before that and that sort of thing. [20] Okay. That's everything I wanted to take up. [21] Anything else you need to inquire about, Mr. Edwards?
[22] MR. EDWARDS: Nothing at the moment, Judge. Thank [23] you.
[24] THE COURT: Mr. Buck?
[25] MR. BUCK: No, Your Honor.
[24][1] THE COURT: I'll enter the pretrial order --I'm [2] sorry, the scheduling order and you'll get a copy in the [3] mail with the dates and things that I have added. And then [4] if any -- and then be sure to see Judge Watanabe for a [5] settlement conference. And if anything comes up, just file [6] a motion and let me know what the issue is and we'll take it [7] up.
[8] MS. EDWARDS: ***Rill***[50] --Mr. Buck?
[9] MR. BUCK: Yes.
[10] MS. EDWARDS: Will you be calling us before you set [11] the appointment with Judge Watanabe ***or --***[51]
[12] MR. BUCK: Sure. Why don't you give me your phone

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[48] "uh those weeks"
[49] "uh two"
[50] "Mr. – one more thing,"
[51] "for Bruce's days off?"

[13] number again.
[14] MS. EDWARDS: Area code 303, 341-9433.
[15] MR. BUCK: I'm sorry, what were the --what was the [16] prefix?
[17] MS. EDWARDS: 341.
[18] MR. BUCK: Great. Okay.
[19] MS. EDWARDS: Thank you.
[20] THE COURT: All right. I will get this in the [21] mail. Thank you very much. Goodbye.
[22] MR. EDWARDS: Goodbye.
[23] (Whereupon, the within hearing was then in [24] conclusion at 12:05 p.m. on May 17, 2001.) [25] I certify the foregoing is a correct transcript, **[25]**[1] to the best of my knowledge and belief, from the record of [2] proceedings in the above-entitled matter
[3][4] s/*Shirley J. Woods* *1-5-04*
[5] Signature of Transcriber Date

#146 Tr. of #74 Mtn. to Compel Hrg. 11/19/01

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[1] IN THE UNITED STATES DISTRICT COURT **[1]**
[2] FOR THE DISTRICT OF COLORADO
[3] Case No. 01-BB-36
[4] [5] BRUCE EDWARDS,
[6] Plaintiff,
[7] vs.
[8] U.S. DEPARTMENT OF EDUCATION,
[9] Defendant.
[10] [11] Proceedings before BOYD N. BOLAND, United States [12] Magistrate Judge, United States District Court for the [13] District of Colorado, commencing at 1:38 p.m., November 19, [14] 2001, in the United States Courthouse, Denver, Colorado.
[15] [16] WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS [17] ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED...

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[18] [19] APPEARANCES
[20] BRUCE EDWARDS, the plaintiff herein, appearing pro [21] se.

[22] PETER J. KRUMHOLZ, Assistant U.S. Attorney, [23] appearing for the defendant.

[24] [25] MOTIONS[sic] HEARING

[2][1] PROCEEDINGS

[2] (Whereupon, the within electronically recorded [3] proceedings are herein transcribed, pursuant to order of [4] counsel.[52])

[5] THE COURT: Thank you. Please be seated. Good [6] afternoon.

[7] MR. EDWARDS: Good afternoon.

[8] MR. KRUMHOLZ: Good afternoon, Judge.

[9] THE COURT: This is 01-BB-36, Bruce Edwards against [10] the United States Department of Education, and we are here [11] on discovery motions. May I have entries of appearance. [12] Are you Mr. Edwards?

[13] MR. EDWARDS: Yes, Bruce Edwards.

[14] THE COURT: Mr. Edwards, you are representing [15] yourself, correct?

[16] MR. EDWARDS: Correct.

[17] THE COURT: All right. And for the United – for [18] the Department of Education.

[19] MR. KRUMHOLZ: Peter Krumholz, Assistant U.S. [20] Attorney, Judge.

[21] THE COURT: Thank you. All right. Mr. Edwards, I [22] have read your motion. The copy I have doesn't have the [23] documents that you're talking about attached. Do you happen [24] to have those with you just so I can see what they look [25] like?

[3][1] MR. EDWARDS: Yes, I do. Have them here in just a [2] second.

[3] THE COURT: Sure.

[4] MR. EDWARDS: Thank you.

[5] THE COURT: (Pause) Thank you. Okay. Why don't [6] you go through with me what it is -- what it is that you're [7] -- that you would like and what the problem is. I mean, for [8] example, I'm looking at the one marked U.S.-1 and although [9] it's clearly a photocopy of a form,

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[52] party, Mr. Bruce Edwards [*pro se*, no counsel]

it appears to me to be [10] capable of being read.

[11] MR. EDWARDS: Yes, Your Honor. On the part where [12] my signature shows, partway through the middle and also on [13] the bottom where there's a signature that's cut off, it [14] states that there are other terms on the other side of that [15] particular contract.

[16] THE COURT: Okay. And you've never been provided [17] with the other side?

[18] MR. EDWARDS: Correct.

[19] THE COURT: All right. On the document marked [20] U.S.-4, it's a --

[21] MR. EDWARDS: U.S.-4.

[22] THE COURT: --copy of the check --of a check, it [23] looks like.

[24] MR. EDWARDS: Correct.

[25] THE COURT: And also U.S.-6, it appears to be a **[4]**[1] copy of a check.

[2] MR. EDWARDS: Correct. And those, there are -- [3] there is a section at the top that shows what the bank is [4] that they came from --where they came from --

[5] THE COURT: Um-hum.

[6] MR. EDWARDS:--and I could not read those, [7] although I did receive a clearer copy of that from Mr. [8] Krumholz on Friday.

[9] THE COURT: Okay. So do you have any continuing [10] problem with 4 and 6 or has that been resolved?

[11] MR. EDWARDS: Well., in those I'm not su' -- there [12] are --there is a records disposition that the Department of [13] Education follows and they state certain documents that are [14] to be held for 15 years and then destroyed. Those were [15] included in that list, and so that leads me to believe that [16] they should have been destroyed. And if those are still [17] there, then the rest should be as well or they should have [18] been destroyed with the rest in the 15-year time period.

[19] THE COURT: And when you say "the rest," the rest [20] of what?

[21] MR. EDWARDS: The rest of the documents that [22] accompanied that –those PELL grant checks.

[23] THE COURT: So you think the original of U.S.-1 [24] should still be in existence, is that what you mean?
[25] MR. EDWARDS: Correct. Because that is separate. **[5]**[1] And dealing with the PELL grant check itself -- let me find [2] the -- they have the wrong list -- the disposition schedule. [3] And they list the application payment vouchers. It says [4] they should be transferred to a federal records center at [5] the final -- final payment to grantee and destroyed 15 years [6] after final payment or audit, whichever is sooner. [7] I'm having trouble, after looking at this, where [8] did those come from? Are they -- should they have been sent [9] to the federal records center, then everything else that [10] should have been sent along with them should have been [11] produced ***in the***[53] discovery or, as it says here, they should [12] have been destroyed after 15 years, then those should not [13] exist at all. [14] I'm just --the authenticity of those. Where did [15] they come from?
[16] THE COURT: Okay. All right. And now I'm looking [17] at the document marked U.S.-7. Is your objection that you [18] can't read it or is there more to it than that?
[19] MR. EDWARDS: That one, yes, and it also appears [20] that there are certain documents that should be -- or more [21] terms on the other side. But let me also state that Mr. [22] Krumholz did give me a legible copy of ***it***[54] Friday along with [23] the PELL grant checks. ***And***[55] it says in bold on the bottom [24] that "see reverse side for additional terms of contract." [25] So I just received this Friday.
[6][1] THE COURT: And you don't ha' -- you were not [2] provided with the reverse side?
[3] MR. EDWARDS: Correct.
[4] THE COURT: Okay. And U.S.-14?
[5] MR. EDWARDS: U.S.-14, the contact history from [6] this guarantor, CSAC, the two on the right are mine.

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[53] "during"
[54] "the front"
[55] "But"

And it [7] is difficult to read but it is also in a format that is not [8] understandable to myself, and defendant has stated earlier [9] that it is a document that the defendant is not familiar [10] with in an admission. [11] So there's no way of stating what those notations [12] are. And I don't have a – I do not have a personal [13] understanding of .them, and I haven't been able to get a [14] explanation of the different notations that are listed [15] there.

[16] THE COURT: All right. Mr. Krumholz?

[17] MR. KRUMHOLZ: I'll use the same -- the Bates [18] stamps that you're referring to, Judge. All right, U.S.-l, [19] that's as good as we can do. That's what we had in our [20] file. This came from the California Guaranteed Student Loan [21] Association. We produced to Mr. Edwards what we had in our [22] file, and this is what it was.

[23] THE COURT: Well, let me see if I understand how it [24] works. You, of course, are the United States Department of [25] Education, not the California -- you represent -- not the **[7]**[1] California Guaranteed Student Loan program?

[2] MR. KRUMHOLZ: Right.

[3] THE COURT: Have you made an --have you obtained [4] their entire file?

[5] MR. KRUMHOLZ: As far as I know, yes. Now, the [6] problem with --well, the answer is yes. The problem with [7] some of them, though, was what we received from these [8] separate entities, the school on one hand, and this entity [9] on the other, is fax copies. [10] And so we made a request from TTCI for legible [11] copies, and they --they gave us legible copies which we [12] have given to Mr. Edwards. Now, I don't think we are [13] obligated to do that, but we did. Mr. Edwards has been [14] nothing short of courteous and professional throughout this [15] whole litigation, and in recognition of that, we wanted to [16] do what we could to give him what he wanted.

[17] THE COURT: How about the flip side, you don't have

that?
MR. KRUMHOLZ: We don't have that.
THE COURT: And so far as you know nobody does?
MR. KRUMHOLZ: So far as I know, no one does. That doesn't mean it's not out there. It doesn't mean it's not in the federal record centers. I don't --I don't know. We have produced what the Department of Education has in its files on Mr. Edwards' account.
[8]THE COURT: Okay. So there is no document -- let me make sure I understand -- there is no document that you have concerning the claims and defenses in this lawsuit which you have withheld just because of some technicality?
MR. KRUMHOLZ: No, sir.
THE COURT: You've turned over the entire file?
MR. KRUMHOLZ: No, sir, absolutely not have we held anything on any sort of technicality. What we're dealing with is practically the problem of trying to get our hands on complete and legible documents that are close to 16 years old now. We have --so what we've got is -- we've given Mr. Edwards clear and legible copies of the three receipts for the PELL grants, a clear and legible copy of the first page of the student enrollment agreement, and we don't -- all we have is what was produced to him in the beginning of the application of the loan itself. And as far as the contact history report, I think Mr. Edwards did a good job of telling you what the problem is there. I don't know what that stuff stands for either, and I can't find anyone in the Department of Education who knows. They had it in their files, though, so we produced it.
THE COURT: Mr. Edwards, anything more?
MR. EDWARDS: In connection with those items that **[9]**you --
THE COURT: Well, or anything more that you want to say about -- you've got a -- you've got this motion for production of complete and legible documents, and that's what I'm going to make a ruling on as soon as

everybody has [6] said what they want to tell me about that.

[7] MR. EDWARDS: (Pause) No, Your Honor. With -- in [8] connection with the motion that's --everything that's in [9] the motion, that's all I have to say on this part. Thank [10] you.

[11] THE COURT: (Pause) On the motion for production of [12] complete and legible documents filed by the plaintiff on [13] October 3rd, 2001, the motion is denied. [14] Mr. Edwards, the obligation of a litigant to [15] produce documents either voluntarily under Rule 26 or in [16] connection with a request for production of documents is to [17] produce all of those documents relevant to the lawsuit in [18] their possession, custody or control. [19] In this case, the Department of Education is not [20] withholding any documents, I am told, and I have not been [21] led to believe to the contrary based upon any relevance [22] objection or other objection like that. They have given you [23] the documents which are in their possession, custody and [24] control.

[25] That they don't have full and complete documents **[10]**[1] is a problem for each of you. It may be a problem for them [2] in defending the lawsuit or not. But they can only give you [3] what they have, and they tell me, and I have no reason to [4] doubt that and you presented no evidence to the contrary, [5] that they have more complete documents and they're just not [6] giving them over. So I can't force them to do something [7] that is impossible.

[8] Now, as I say, this may become very important to [9] one side or the other as we go to trial on the case, or as [10] motions for summary judgment or the like are decided. But [11] that's something we'll have to deal with as those events [12] approach. Bur[sic] right now, I'm told the government's given [13] you everything they have, they're as good as they've got, [14] and that's all I can make them do. So I will deny the [15] motion simply because it's not possible for the government [16] --or the

Department of Education to turn over anything more [17] than they've given you.

[18] All right. Is there anything else we should talk [19] about this afternoon, Mr. Edwards?

[20] MR. EDWARDS: In connection with --

[21] THE COURT: Just anything. Are there any problems [22] that you're having that -- other discovery problems or any [23] scheduling problems? I see we have a pretrial conference on [24] December 7th.That's coming up. The case is set for trial [25] in May. Is that trial date still going to work for **[11]**[1] everybody? And the pretrial conference, are you preparing [2] a pretrial order --

[3] MR. EDWARDS: Yes.

[4] THE COURT: -- and everything going smoothly?

[5] MR. EDWARDS: Yes, and I will have the answer to [6] the dispositive motion tomorrow as you have ordered.

[7] THE COURT: Okay. All right. Mr. Krumholz, [8] anything else we should talk about?

[9] MR. KRUMHOLZ: Your Honor, I haven't talked to Mr. [10] Edwards about this, but I'm glad you brought it up. [11] December 7th probably will not work for me. It may. My [12] wife and I have a baby due December 5th.

[13] THE COURT: Oh, congratulations.

[14] MR. KRUMHOLZ: Thank you. On the off chance that [15] we're a few days late, December 7th may work, but I -- I [16] just don't know.

[17] THE COURT: Well, let's -- would you rather move it [18] a week later or something like that or is that -- or a [19] couple of weeks? I mean, we don't have a trial until May, [20] so we can do it a little later if that accommodates --if [21] that suits everybody better.

[22] MR. KRUMHOLZ: If we could push it to January, [23] Judge, that might work better. Mr. Edwards, I don't know if [24] that would be --

[25] MR. EDWARDS: That would be fine.

[12][1] MR. KRUMHOLZ: Okay. As far as I know, January is [2] fairly open.

[3] THE COURT: Okay. My calendar. Do you have your [4] calendar up?

[5] THE CLERK: Just a second. The computer is all [6] kind of (inaudible) on us.(Pause) Okay. Mine is coming [7] up.

[8] THE COURT: Do we have a date for a pretrial [9] conference, say, the week of January 7th?

[10] THE CLERK: Let's see. You have criminal duty, but [11] we can have those early morning.

[12] THE COURT: 9 o'clock on any of those days?

[13] THE CLERK: Yes. You have a 9 o'clock --not on [14] Tuesday the 8th and not on Friday the 11th, but Monday, [15] Wednesday or Thursday.

[16] THE COURT: So the 8th --

[17] THE CLERK: So that will be the 7th, the 9th or the [18] 10th you could do a 9 o'clock pretrial conference. January [19] 7th, 9th or 10th.

[20] MR. KRUMHOLZ.: Any of those will work.

[21] THE COURT: Do you prefer any of those, Mr. [22] Edwards? The 7th is a Monday, the 9th is a Wednesday, the [23] 10th a Thursday at 9 a.m. What's your -- do you work? Is [24] there a schedule -- would it be better to have it later in [25] the afternoon or early in the morning?

[13][1] MR. EDWARDS: No, morning would be fine. I work at [2] United, so I'm on a layoff status right now, so I'm in [3] between looking for jobs, I'm doing many job interviews but [4] I can schedule them later. So Wednesday at 9?

[5] THE CLERK: Wednesday at 9, we can do that. I'll [6] go ahead and enter that.

[7] THE COURT: Okay.

[8] MR. KRUMHOLZ: Thank you, Judge.

[9] THE COURT: All right. Here are these documents [10] back, Mr. Edwards. Thank you. [11] All right. Thank you very much.

[12] (Whereupon, the within proceedings were then in [13] conclusion at 1:58 p.m. on November 19, 2001.)

[14] [15] I certify the foregoing is a correct transcript, to the [16] best of my knowledge and belief, from the record of [17] proceedings in the above-entitled matter.

[18] [19] s/*Shirley J. Woods* 1-5-04
[20] Signature of Transcriber Date

#147 Tr. of #81 Pretrial Conf. 1/9/02

[1] IN THE UNITED STATES DISTRICT COURT [1]
[2] FOR THE DISTRICT OFCOLORADO
[3] Case No. 01-BB-36
[4] [5] BRUCE EDWARDS,
[6] Plaintiff,
[7] vs.
[8] U.S. DEPARTMENT OF EDUCATION,
[9] Defendant.
[10] [11] Proceedings before BOYD N. BOLAND, United States [12] Magistrate Judge, United States District Court for the [13] District of Colorado, commencing at 9:12 a.m., January 9, [14] 2002, in the United States Courthouse, Denver, Colorado.
[15] [16] WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS [17] ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED...
[18] [19] APPEARANCES
[20] BRUCE EDWARDS, the plaintiff herein, appearing pro [21] se.
[22] PETER KRUMHOLZ, Assistant United States Attorney [23] at Law, appearing for the defendant.
[24] [25] PRETRIAL CONFERENCE
[2][1] PROCEEDINGS
[2] (Whereupon, the within electronically recorded [3] proceedings are herein transcribed, pursuant to order of [4] counsel.[56])
[5] THE COURT: This is 01-BB-36, Edwards against the [6] Department of Education, and we are here this morning for a [7] pretrial conference. Mr. Edwards who is proceeding pro se [8] is here in person and Mr. Krumholz is here for the [9] defendant. [10] In the simplest possible terms, Mr. Edwards, tell [11] me what happened and what it is you want as a result

[56] party, Mr. Bruce Edwards [*pro se*, no counsel]

of this [12] lawsuit --or through this lawsuit.
[13] MR. EDWARDS: What it is that I want.
[14] THE COURT: Well start with what happened first.
[15] MR. EDWARDS: What happened. When I was contacted [16] by a ***contract***[57] of the Department of Education, they stated [17] that I owed a loan. And this was in '93, 1993, and I didn't [18] -- I answered back, I didn't owe a loan, give me some type [19] of proof or information so that I could follow up on this. [20] And I didn't hear anything until 1996. And another company [21] sent me the same demand. [22] I replied please send the -- it said that you have [23] to answer within 30 days and they will send ***me*** proof. And [24] so I ***acted***[58] within the 30 days asking for proof. [25] What occurred was they sent their promissory note **[3]**[1] and just the front half of it. So I kept replying and [2] replying, and we went to -- we went through, I think, five [3] different collection agencies, and I kept receiving the [4] front half of the promissory note. [5] So then I tried to deal directly with the [6] Department of Education by using the addresses that were on [7] the letters. And when I did, ***based on the***[59] letters to [8] dismiss the loan but that were applicable to after July -- [9] I mean January of '86 -- this loan was purported to have [10] occurred in '85. So that didn't fit me so I sent those back [11] saying I needed something else, this doesn't apply to me. [12] And they said it did, and I couldn't figure out if -- why [13] would it apply to me if it was '86 versus '85. [14] Finally, it occurred to that ***date***,[60] the only [15] recourse I had was after my taxes were taken. ***They were***[61] [16] ***prepared***[62] --
[17] .THE COURT: Let's go back.

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[57] "contractor"
[58] "answered"
[59] "they sent me"
[60] "they --"
[61] "There was"
[62] "a paragraph that --"

[18] MR. EDWARDS: Okay.
[19] THE COURT: When you contacted the Department of [20] Education, they sent you material related to something that [21] happened in 1986?
[22] MR. EDWARDS: Correct.
[23] THE COURT: And previously the promissory note you [24] received was for 1985?
[25] MR. EDWARDS: For 1995. .I'm –
[4][1] THE COURT: Oh.
[2] MR. EDWARDS: -- sorry, '85, yes. '85.
[3] THE COURT: '85.
[4] MR. EDWARDS: Yes.
[5] THE COURT: Okay. And then at some point a tax [6] return was not funded because there was an offset made by [7] the Department of Education?
[8] MR. EDWARDS: Right.
[9] THE COURT: When was that?
[10] MR. EDWARDS: That occurred --I don't remember the [11] date -- that occurred in 1999. Let me get the exact date [12] for you.
[13] THE COURT: So in 1999 in respect to your 1998 [14] taxes?
[15] MR. EDWARDS: Yes.
[16] THE COURT: And how much?
[17] ,MR.EDWARDS:I have the exact amount here [18] somewhere. (Pause) Judge, I think it was $234 but let me [19] get it for you. (Pause)
[20] MR. KRUMHOLZ: For some reason I had it my head it [21] was $211 and change but -
[22] THE COURT: Okay. So something above $200 but [23] probably less than 250.
[24] MR. EDWARDS: Yes. Correct.
[25] THE COURT: And what's the amount of the loan?
[5][1] MR. KRUMHOLZ: I think at this point, Judge, it's [2] over $5,000 after interest. I don't remember the original [3] principal amount. It's probably doubled with the interest [4] and it's now over $5,000.
[5] MR. EDWARDS: That would sound correct. I'm not [6] sure of the exact amount now.

[7] THE COURT: And is the Department of Education or [8] any other entity attempting to collect that balance? I [9] mean, there's not a counterclaim for the balance due? So [10] you're just going to continue -- if there's a tax refund, [11] you'll continue to offset with that?

[12] MR. KRUMHOLZ: Right.

[13] THE COURT: Okay. And what relief is it that [14] you're trying to get here, Mr. Edwards? Are you trying to [15] get the Court to say that there was no debt? .Or what is it [16] you're trying to accomplish through your lawsuit?

[17] MR. EDWARDS: What I have been trying to accomplish [18] is to get --if there is a debt, I have no problem paying [19] it. But this occurred in 1985 and this is 2002, and I just [20] would like to see a loan document other than a promissory [21] note --because ***that's what***[63] I received --the back half of [22] the promissory note. ***If they said***[64] there's supposed to be a [23] payment schedule attached to it, ***were***[65] that actually ***to*** [24] ***become***[66] part of the promissory note, and I haven't received [25] that either. So just to receive a canceled check because **[6]**[1] 1985, that was supposed to happen in conjunction with this [2] promissory note.

[3] THE COURT: So you say a canceled check. That [4] would be the check ***of***[67] which --

[5] MR. EDWARDS: The loan.

[6] THE COURT: -- the loan was funded by?

[7] MR. EDWARDS: Exactly.

[8] THE COURT: All right.

[9] MR. EDWARDS: And if any of those things had of [10] occurred, we would not be here ***right.***[68] And I've been [11] fighting this loan, trying to get something other than

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63 "after"

64 ", it states that"

65 "where"

66 "becomes"

67 "by"

68 "right now."

the [12] promissory note that ***they***[69] -- that this loan was paid by this [13] lender. ***This***[70] lender paid it to me or paid it to the school [14] and you now owe it. But I haven't received anything like [15] that.

[16] THE COURT: Is there a jury demand here? Is there [17] a right to a jury?

[18] MR. EDWARDS: There's a right -

[19] THE COURT: I can't remember. Is it set for a jury [20] trial?

[21] MR. EDWARDS: No, it's not set for a jury trial.

[22] THE COURT: Okay. That's right. You got that set [23] in this court.

[24] MR. EDWARDS: Yes.

[25] THE COURT: Well, I'm not going to make you answer **[7]**[1] this question today, but you're going to have to answer it [2] at the time of trial, and it's the ulti' -- I mean, the --- [3] what's going to decide this case is not whether or not there [4] was a payment schedule, a canceled loan check or any of [5] that. Somebody's going to ask you did you receive the money [6] or do you know that the money was paid to the school for [7] tuition. [8] And whether the government can show documents to [9] that effect or not is really just a secondary question. I [10] mean, the first question is going to be you. And if you [11] have to say yes, either I received a check and I cashed it [12] to pay for college, or pay for anything for that matter, but [13] I did receive a check and I used that money. Or if the [14] answer is yes, I know the school got paid my tuition, I [15] think you're going to owe the money. So --

[16] MR. EDWARDS: Well, ***then***[71] -- and the answer is no to [17] both questions.

[18] THE COURT: Okay. All right. So I mean, at the [19] end of the day, then you want your 230 --your $200-plus [20] back and you want me to say in a judgment that no

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[69] "states"

[70] "; this"

[71] "I understand that"

loan is [21] owed, ,is that right?
[22] MR. EDWARDS: Correct.
[23] THE COURT: Okay. I have a better grasp of the [24] case. Mr. Krumholz, any holes that you want to fill in so [25] I have –
[8][1] MR. KRUMHOLZ: Well, Judge -
[2] THE COURT: -- did I miss anything?
[3] MR. KRUMHOLZ: -- in light of that summary by Mr. [4] Edwards, ,obviously, the assertion of the jurisdictional [5] bases ***of***[72] the clai***m***[73] and probably the listing of specific [6] relief sought -- and specific relief sought goes on for [7] three pages, I think -- might need to be redone. [8] Jurisdiction, for example, there's an assertion [9] that this Court has jurisdiction under 42 Section -- 42 USC, [10] Section 1988, 42 USC, Section 2000(a} (6) (h). I had never [11] understood those—those statutes to be at issue. I [12] believe those are civil rights --those raise civil rights [13] issues. I have never understood that to be --that issue to [14] be at play in this case.
[15] THE COURT: You don't dispute the jurisdiction of [16] the Court? Just not --
[17] ,MR. KRUMHOLZ: Not -
[18] THE COURT: --just not on those bases?
[19] MR. KRUMHOLZ: Exactly. To the extent he asserts [20] those, I assume he's asserting --trying to assert claims [21] under those statutes.
[22] THE COURT: Well, let's see. Mr. Edwards, do you [23] claim some sort of violation of your civil rights or is this [24] just a dispute as to whether or not there was a student loan [25] and whether or not it was funded?
[9][1] MR. EDWARDS: Under what title again?
[2] THE COURT: On page 2 of the proposed pretrial [3] order, at the top, under part I, do you see that? Page 2.
[4] MR. EDWARDS: Okay. I got mine. Yes.
[5] THE COURT: Up at the top there's a subparagraph I.

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[72] "," [no word/s between "bases" and "the"
[73] "claims"

[6] See that?
[7] MR. EDWARDS: Oh, Title 42 --
[8] THE COURT: Title 42, chapter 21, subchapter 1, [9] Section 1988(a). 42 USC Section 1988 deals with the [10] violation of civil rights. In our discussion a minute ago, [11] you weren't saying that your civil rights -- I don't think [12] you were saying your civil rights were violated; you were [13] saying that the government's trying to collect a loan that [14] you don't owe, and you want them to stop that and give you [15] back the money that they did collect. [16] There's a federal question here which is whether [17] or not you're indebted to the United States under the [18] student loan program, so the Court has jurisdiction. But I [19] don't hear anybody saying that this is a civil rights case. [20] And I don't know what Title 8, Section 13 --Title 21 -- [21] ***(noise on tape)*** 28, 1346. [22] So it's not that the United States -- or the [23] Department of Education is trying to trick you out of court. [24] I think what Mr. Krumholz is saying -- well, 1346 may be an [25] accurate recitation, I don't know. 28, 1339.
[10][1] MR. EDWARDS: Title 42 -- 42, chapter 21.
[2] THE COURT: So United States Code, Section 1339 [3] says the district court shall have original jurisdiction of [4] any civil action arising under any Act of Congress relating [5] to the postal service. I don't think this case involves [6] anything relating to the postal service. Mr. Krumholz, do [7] you know of any?
[8] MR. KRUMHOLZ: Not to my knowledge, Judge.
[9] THE COURT: So what --what I wonder if we might do [10] is have you and Mr. Krumholz spend a little bit of time [11] together going over the proposed pretrial order and taking [12] out parts that really don't apply. I mean, why do you think [13] we need jurisdiction under matters relating to the postal [14] service? Because you received something through the mail?
[15] MR. EDWARDS: That was a -- something I was looking [16] at. But I will be more than happy to go through it with him [17] to get --

[18] THE COURT: Okay.
[19] MR. EDWARDS: -- things clarified.
[20] THE COURT: And what I would like you to do is to [21] put in simpler, more straightforward language -- and I think [22] it could probably take no more than three pages or so -- [23] what it is that happened and what it is you want in your [24] claims and defenses, sort of like we did this morning, which [25] is that, you know, you were contacted in '93 and then again **[11]**[1] in '96 concerning collection and, you know, sort of the [2] facts that happened there. [3] And then what happened with the offset of your tax [4] return in '99. And then tell me in straightforward language [5] what you want, which is a return of the money that the [6] government offset. I suspect you want interest on that. [7] And you want to have the loan adjudged not to be owed. And [8] that would help me in understanding the case and getting [9] ready for the trial. [10] And, Mr. Krumholz, although you must zealously [11] represent your client, I'll ask that you cooperate with Mr. [12] Edwards to accomplish those things.
[13] MR. KRUMHOLZ: Of course, Judge.
[14] THE COURT: Okay. Let's go to page 10 dealing with [15] pending motions. Madam Deputy, do we show a motion for [16] summary judgment as --I don't see it in the file but it [17] might just be misfiled someplace.
[18] THE CLERK: (Inaudible)
[19] THE COURT: Filed October 1st, 2001. Defendant's [20] motion for summary judgment.
[21] THE CLERK: Yes.
[22] THE COURT: Okay.
[23] THE CLERK: There is a motion (inaudible)
[24] THE COURT: All right. I'll take that up shortly [25] so that we'll get a resolution of that well in advance or **[12]**[1] as much in advance of trial as we can. [2] Your January 9th -- your motion to attend the [3] January 9th settlement conference by telephone was denied by [4] Judge Watanabe yesterday or the day before. [5]

On --also on page 10 under Witnesses, you [6] indicate that Dana Edwards -- is that your wife?

[7] MR. EDWARDS: Dani Edwards.

[8] THE COURT: .Dani Edwards, I'm sorry -- will [9] testify. You don't say that you will testify. You have to [10] list here everybody who you are going to call during the [11] trial. So I expect you're going to --you, yourself, are [12] going to want to testify, aren't you?

[13] MR. EDWARDS: Yes.

[14] THE COURT: So be sure to add yourself. And if [15] there's anybody else --

[16] MR. EDWARDS: No one else.

[17] THE COURT: -- add those people. [18] On page 17, under part 10, there's some discussion [19] about a settlement conference. Have you been in front of [20] Judge Watanabe before today or is this the first settlement [21] conference you've had with Judge Watanabe?

[22] MR. EDWARDS: First settlement conference.

[23] THE COURT: This is the first, okay. And so when [24] you say the status of the initial settlement conference [25] remains as in paragraph 8 of the scheduling order filed May **[13]**[1] 18th, what you mean to say there is that there's a [2] settlement conference today?

[3] MR. EDWARDS: Right.

[4] THE COURT: Okay. [5] Under part 11, the Offer of Judgment, I can't give [6] .you legal advice and, because you're not his client, neither [7] can Mr. Krumholz. But, in general, the way an offer of [8] judgment works is that one side or the other makes a written [9] offer of judgment to the other side. [10] So, for example, you might offer to pay the United [11] States $500, just for example. If --that written offer of [12] judgment remains open for ten days. If it's accepted during [13] that ten-day period, it become[sic] a judgment of the Court and [14] that ends the lawsuit. If it is not accepted during that [15] ten-day period, then, at trial, if you don't do at least as [16] well as the offer of judgment, you may be responsible for [17] the costs, not lawyer's fees, but costs

the other side [18] incurred after the date of the offer of judgment going [19] forward. [20] Now, has there been an offer of judgment made in [21] this case?

[22] MR. ***EDWARDS:***[74] No, sir.

[23] THE COURT: Okay. So right now, none of that [24] applies. Did I say it generally correctly, how an offer of [25] judgment works?

[14][1] MR. KRUMHOLZ: Yes.

[2] THE COURT: Okay.

[3] MR. KRUMHOLZ: I believe so.

[4] THE COURT: All right. So as I say, neither I nor [5] Mr. Krumholz can give you legal advice, but, in general, [6] that's how it works.

[7] All right. Let me ask you to work together and to [8] resubmit a revised pretrial order a couple of weeks from [9] now. This is the 9th, so let's say by January 25th, if you [10] would, please submit a revised pretrial order. [11] My main concern is that this one is not very [12] straightforward in its language, so make it as [13] straightforward and understandable, to somebody who doesn't [14] know these facts, as you can and submit it by then. If [15] there is any problem with it, I'll call you in and we'll [16] take it up. Otherwise, I'll review it and if it seems okay [17] to me, I'll sign it without the necessity of a further [18] conference.

[19] However, I am going to require that you exchange [20] exhibits. I mean, I saw the list of exhibits is already [21] contained here, so I will require that you exchange your [22] exhibits by January 14th. That way, maybe you can stipulate [23] to them in the document --or to at least to some of them in [24] the document that you submit to me. [25] All right.

Mr. Edwards, is there anything else **[15]**[1] that you would like us to talk about this morning?

[2] MR. EDWARDS: (Pause) No, Your Honor. I think [3] after working with Mr. Krumholz over this -- ***over the***[75]

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[74] KRUMHOLZ:

[75] "order"

[4] getting -- getting ***me***[76] clarified, ***I'll***[77] be in a better [5] position.

[6] THE COURT: Okay. Mr. Krumholz, anything else we [7] should take up this morning?

[8] MR. KRUMHOLZ: No, Your Honor. Thank you.

[9] THE COURT: Okay. Well, I urge you to work hard [10] with Judge Watanabe this afternoon and see if you can [11] resolve the case, but otherwise I'll see you in connection [12] with the pre -- trial preparation conference in April. [13] Thank you very much.

[14] (Whereupon, the within proceedings were then in [15] conclusion at 9:35 a.m. on January 9, 2002.)

[16] I certify the foregoing is a correct transcript, to the [17] best of my knowledge and belief, from the record of [18] proceedings in the above-entitled matter.

[19] *Shirley J. Woods* *1-4-05*

[20] Signature of Transcriber Date

#148 Tr. of #118 Status Conf. 4/22/02

[1] IN THE UNITED STATES DISTRICT COURT **[1]**

[2] FOR THE DISTRICT OF COLORADO

[3] Case No. 01-BB-36

[4] [5] BRUCE EDWARDS,

[6] Plaintiff,

[7] vs.

[8] U.S. DEPARTMENT OF EDUCATION,

[9] Defendant.

[10] [11] Proceedings before BOYD N. BOLAND, United States[12] Magistrate Judge, United States District Court for the [13] District of Colorado, commencing at 11:02 a.m., April 22, [14] 2002, in the United States Courthouse, Denver, Colorado.

[15] [16] WHEREUPON, THE ELECTRONICALLY RECORDED PROCEEDINGS [17] ARE HEREIN TYPOGRAPHICALLY TRANSCRIBED...

[18] [19] APPEARANCES

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[76] "it"

[77] "we'll"

[20] BRUCE EDWARDS, the plaintiff herein, appearing pro [21] se.

[22] PETER KRUMHOLZ, Assistant United States Attorney, [23] appearing for the defendant.

[24] [25] RULE 16 SCHEDULING CONFERENCE

[2][1] PROCEEDINGS

[2] (Whereupon, the within electronically recorded [3] proceedings are herein transcribed, pursuant to order of [4] counsel.)

[5] THE COURT: Thank you. Please be seated. Good [6] morning.

[7] MR. KRUMHOLZ[78]: Good morning.

[8] THE COURT: This is 01-BB-36, Edwards against the [9] Department of Education. We're here this morning at my [10] request for a status conference concerning, really, the [11] procedure for going forward with the case. [12] Mr. Edwards, who is proceeding pro se as the [13] plaintiff, is here representing himself, and Mr. Krumholz is [14] here on behalf of the Department of Education.

[15] Mr. Krumholz, let me talk to you for just a [16] minute. I guess as we're --you're fine, you can remain [17] seated.

[18] MR. KRUMHOLZ: Thank you.

[19] THE COURT: I guess as we really got ready for the [20] trial and began in earnest a review of the dispositive [21] motion, it became apparent to me, I think, that this is a -- [22] really an appellate review of an administrative record, [23] although throughout the pretrial stages I never treated it [24] that way. And nobody ever stood up and said, "Hey, you're [25] dong[sic] it wrong." Is it an adminis' -- is it an appellate **[3]**[1] review of an administrative record?

[2] MR. KRUMHOLZ: Judge, I took this case when it was [3] in the middle of discovery. And so I took it and moved with [4] the discovery, answered Mr. Edwards' discovery responses, [5] presuming all along that it was a

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[78] AND MR. EDWARDS

case to go trial, not an [6] APA matter. [7] In looking at this case, I still think there -- I [8] think there is an administrative review part in this [9] complaint. I also think, though, there's a cause of action [10] in the Higher Education Act, Judge, and it involves [11] essentially the same claim which is disputing the validity [12] or the existence of a loan. But I think that portion of his [13] complaint is appropriate for going to trial if we don't [14] succeed on our Rule 56 motion.

[15] THE COURT: Okay.Say that again.What part -- [16] what is it that is appropriate for trial?

[17] MR. KRUMHOLZ: There is -- well, Mr. Edwards can [18] probably explain it better than I can, it's his complaint. [19] But I understand him to be asserting a claim under the [20] Higher Education Act. That is not an APA review matter. [21] And he has a right to a trial, I believe, on that, assuming [22] there are disputed issues of fact. [23] There is, though, an APA claim. Of course, on [24] that we'll have to designate a record because we don't have [25] an APA record for that case -- for that claim. So I think **[4]**[1] the issues are, one, getting an APA administrative record in [2] place from which we can then brief the APA claim. [3] And then it seems to me it might be appropriate [4] for us to resubmit a new motion on the Higher Education Act [5] claim, which is a Rule 56 motion.

[6] THE COURT: And what is the thrust, in your view, [7] of the Higher Education Act claim?

[8] MR. KRUMHOLZ: It's the same claim as under APA. [9] Under the APA, what he's challenging the Department of [10] Education's conclusion that the student loan is in fact [11] valid. Under the Higher EducationAct claim, he's not [12] seeking review of the Department of Education's final [13] decision on that.He's seeking, de novo, a finding from [14] this Court after --presumably after a trial, that in fact [15] that student loan is either invalid or does not exist. [16] That's the way I understand the difference between the two [17] claims.

[18] THE COURT: So the Higher Education Act claim is [19] brought under 31 United States Code 3701?

[20] MR. KRUMHOLZ: I think that's right, Judge;I [21] don't have the citation in front of me.

[22] THE COURT: And both the agency and the district [23] court get to decide whether or not a loan was made, you [24] think?

[25] MR. KRUMHOLZ: The way I read the Higher Education **[5]**[1] Act claim, it seems to me that's the claim that decides the [2] matter.I mean, the APA. all he gets is the --he isn't [3] really getting what he wants out of this lawsuit, it seems [4] to me, und.er the APA. We just --we just --you would just [5] remand it back to the Department of Education and have them [6] redetermine the administrative decision.

[7] THE COURT: But normally that kind of a decision is [8] made one place or the other and not both places, isn't it?

[9] MR. KRUMHOLZ: Yes.

[10] THE COURT: All right.But you -- do you agree [11] that -- or do you not have a view that Mr. Edwards has the [12] right to seek that determination, there was or wasn't a [13] loan, in the district court under the Higher Education Act?

[14] MR. KRUMHOLZ: I wish it were only an APA [15] opportunity. I don't think it is. I think he has a right [16] under the Higher Education Act to seek de novo review from [17] this Court regarding the existence of the -- of the validity [18] of the student loan.

[19] THE COURT: So do I have to do -- I mean, if I'm [20] deciding -- if I decide that de novo, then do I have to [21] review?

[22] MR. KRUMHOLZ: Seems to me the answer to that [23] question is no. I'm sorry, I interrupted you, but your [24] question was do I have to decide the APA claim if I decide [25] it de novo. It seems to me the answer is no. I mean, the **[6]**[1] APA claim would be subsumed by the Higher Education Act [2] claim.

[3] THE COURT: WeIll let's -- would you bring in 31 [4]

United States Code 3701.
[5] THE CLERK: Um-hum. [6] (Pause)
[7] MR. KRUMHOLZ: Judge, I'm not sure the statutory [8] citation is the correct one for the Higher Education Act, [9] that 3701 section.
[10] THE COURT: Uh-huh. It doesn't appear to be.
[11] MR. KRUMHOLZ: I believe it' s in 20 USC, and I [12] think it's Section 1082.
[13] THE COURT: Do you know, Mr. Edwards?
[14] MR. EDWARDS: For the Higher Education Act or -
[15] THE COURT: Well, let's back up.
[16] MR. EDWARDS: Okay.
[17] THE COURT: What do you think it is you want? Do [18] you want me to just review what the -- to review the [19] determination of whether or not you owe a debt? I mean, if [20] I -- I know you've amended your complaint once --well, [21] let's go to your amended complaint. Let's just do this [22] right. [23] In your amended complaint, at paragraph 8, you say [24] plaintiff seeks judicial review of preliminary, procedural, [25] intermediate and final agency actions of the defendant under **[7]**[1] 5 United States Code, Section 704, based upon the financial [2] management service's notice of treasury offset being the [3] expression. of a final agency decision by defendant with [4] regard to the EDUC claim against plaintiff. [5] So are you asking me to review the decision of the [6] secretary as to whether or not you owe a debt or are you [7] asking for something else?
[8] MR. EDWARDS: I'm asking for the first. For you to [9] review the final agency action.
[10] MR. KRUMHOLZ: If that's --if that's his claim, [11] then I think your order earlier vacating the pretrial [12] conference is absolutely right. We've ***got a designated***[79] [13] administrative record and set a briefing schedule.
[14] THE COURT: Yes. You objected to my vacating the [15] pretrial conference and the trial. And let me tell you

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[79] "gotta designate a"

what [16] I think needs to go on --

[17] MR. EDWARDS: Okay.

[18] THE COURT: -- and then you tell me why you tink[sic] [19] that's wrong. As I read that last paragraph of your amended [20] complaint, it seemed to me that what you were saying is the [21] secretary, or whoever made the decision to offset against [22] your taxes and that you owe this debt, et cetera, made a [23] mistake. And I want you, district court, to review that [24] decision and decide whether it was right or wrong. [25] And if that's what you want, then there's this **[8]**[1] case that was decided by the Tenth Circuit which says when [2] a district court is reviewing an administrative action, then [3] the district court really acts like an appeals court. And [4] you don't have a trial, because all the district court does [5] in that situation is review the stuff that was in front of [6] the administrative decision-maker -- I'll call it the [7] secretary here, I don't know if it was the secretary -- but [8] review the stuff that was in front of the secretary and [9] review thelaw and decide whether the decision was arbitrary [10] and capricious, based on substantial evidence, you know, [11] whatever the right standard is. [12] And so if that's what I'm doing, then we don't [13] need a trial. What I need is the record that was in front [14] of the secretary when the secretary made his or her [15] decision, and then a brief from you and from Mr. Krumholz [16] telling me what the lie is and why, based upon the records[80] [17] that was in front of the secretary, the decision the [18] secretary made was right or wrong and what it is that -- [19] what relief it is that you want. [20] You still get to present arguments about why what [21] the secretary did was wrong. What you don't get to do is [22] present evidence that wasn't in front of the secretary, [23] because I'm just reviewing the decision that the secretary [24] made. I 'm not making the decision all by myself. [25] Now, does that sound like what you want me to do?

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[80] singular

[9][1] MR. EDWARDS: Yes.
[2] THE COURT: Okay. All right. Then I think that [3] the decision to vacate the trial is correct. I think that [4] I have -- that my reading of the amended complaint indicates [5] it is an administrative review. Mr. Edwards has confirmed [6] that so we need to proceed on that basis and as set out by [7] the Tenth Circuit in Olinhouse (phonetic) against Commodity [8] Credit, 42 F.3d 1560, a decision of the Tenth Circuit in [9] 1994. [10] Now, I attached a copy of that decision to my [11] order. Did you get that, Mr. Edwards?
[12] MR. EDWARDS: Yes, I have it right here.
[13] THE COURT: Okay. And so that you know what it is [14] I think we're doing is on -- if you look at the upper right [15] hand corner, the discussion of what I think we're doing is [16] on pages 19 and 20 where in the left-hand column under -- [17] there are brackets and the number 25. It says the district [18] court's reliance on arguments, documents and other evidence [19] outside the administrative record is due at least in part to [20] the illicit procedure it employed to determine the issues [21] for review.The district court processed the farmer's [22] appeal as a separate, independent action initiated by a [23] complaint and subject to discovery in the pretrial motions [24] practice, which the Tenth Circuit then goes on to say that's [25] wrong. **[10]**[1] Instead on the next page, page 20, it says the [2] district -- at the very top, left-hand column -- the [3] district court is not exclusively a trial court. In [4] addition to its nisi prius function it must sometimes act as [5] an appellate court.Reviews of agency action in the [6] district courts must be processed as appeals. In such [7] circumstances, the district court should govern itself by [8] referring to the Federal Rules of Appellate Procedure. [9] Motions to affirm and motions for summary judgment are [10] conceptually incompatible. [11] So what you need to do or what we need to do is [12] figure out how we're going to get the record that was before [13] the secretary in front of me and then we need to set a [14] briefing

schedule where you file a brief about why the [15] decision of the secretary was wrong and what the right [16] decision should have been. And Mr. Krumholz will file a [17] brief just in response to that. And then if you want one, [18] I'll allow you to file a brief -- a short reply. [19] And then I'll set the case for argument and hear [20] what you have to say in addition to what you've written. [21] And then I'll make a decision one way or the other. [22] Where is the -- what is the record and where is [23] it?

[24] MR. KRUMHOLZ: Judge, I imagine that much of the [25] record welve already submitted. Of course, we'll submit it **[11]**[1] in a better form than what it's been submitted. But I think [2] what's attached to the summary judgment motion that we filed' [3] is essentially the administrative record. I will have to [4] check with the Department of Education and make sure there [5] aren't other documents that were in front of the decision- [6] maker at the time that the decision was made. But I suspect [7] most of it is already -- has already been submitted. [8] We will put together the administrative record in [9] a Bates stamp form. It's easier for everyone to use. But [10] I -- Judge, I just don't know whether there were other [11] documents in front of the secretary that we have not already [12] submitted in previous pleadings.

[13] THE COURT: All right.

[14] MR. KRUMHOLZ: I don't think it will take long to [15] find that out.

[16] THE COURT: When -- given the fact that Mr. Edwards [17] is proceeding pro se, is not trained in the law, doesn't [18] have the same access to the secretary as you do, I'm going [19] to, in the first instance, order that the record be -- after [20] consultation with Mr. Edwards, that the record be submitted [21] to me by the Department of Education. [22] When do you think you can accomplish that, Mr. [23] Krumholz?

[24] MR. KRUMHOLZ: Judge, I think I can get it done [25] within the next two weeks.

[12][1] THE COURT: So if I --
[2] MR. KRUMHOLZ: Say May 6th.
[3] THE COURT: May 6th. I'll give you to May 15th.
[4] MR. KRUMHOLZ: Okay. Thank you, Judge.
[5] THE COURT: So what I'm saying, Mr. Edwards, is [6] that whatever was before the secretary that's appropriate [7] for my review of the secretary's decision, I'm going to ask [8] Mr. Krumholz to put that together. Now, as he does that, I [9] want you to tell him what you think should be included among [10] those things. Because I know, for example, in your initial [11] complaint at least you attached a lot of exhibits.
[12] MR. EDWARDS: Right. Which is what I felt was the [13] record at the time.
[14] THE COURT: And that may be part of the record. [15] So, Mr. Krumholz, review those and consult with Mr. Edwards. [16] Submit a record by May 15th, 2002. If you can agree that [17] that is the record, then submit it to me by a stipulated -- [18] by a stipulation by both parties that that is the record. [19] Mr. Edwards, if you don't agree, if there are [20] additional materials that you think should be included in [21] the record that Mr. Krumholz has not included, then by June [22] 7th file your supplement to the records -- to the record [23] telling me -- attaching docu' --attaching copies of the [24] documents that you think should be included that Mr. [25] Krumholz has not and why you think they are part of the **[13]**[1] record and necessary for my review. [2] And, Mr. Krumholz, you may file an objection to [3] that by June 21st. And that will define the record. I'll [4] enter an order eventually but at least you will have told me [5] what each of you believes the record to be and we'll know [6] that by June 21st, 2002. [7] Then, Mr. Edwards, I'll need a brief from you. [8] And it's a brief similar to --I mean, you've filed a lot of [9] briefs in this case. But it's a brief similar to your [10] response -- well, actually what it will look like, really, [11] is the defendant's motion to dismiss or for summary [12] judgment, which they filed -- I don't seem to have it in

front of me.
MR. EDWARDS: I have it -
MR. KRUMHOLZ: October 1st of --
THE COURT: Motion for summary judgment or in the alternative motion to dismiss, which they field on October 1, 2001. Now, you take the record that's in front of you and then you make arguments about why what the secretary did was wrong.You go first.And when --after June 21st, how much time do you think you need to file your brief?
MR. EDWARDS: One -- file it by July 1st?
THE COURT: I'll give you more time than that.
MR. EDWARDS: Okay.
[14]THE COURT: I'll give you until July 31st.
MR. EDWARDS: July 31st.
THE COURT: You think you can make your argument in 20 pages?
MR. EDWARDS: Yes.
THE COURT: All right. I'll limit you to 20 pages. Now, you don't have to attach again the exhibits because they'll be part of the record which you and Mr. Krumholz already have submitted.
MR. EDWARDS: All right.
THE COURT: And you should call yourself, I think, in that brief plaintiff/appellant, a-p-p-e-l-l-a-n-t. And, Mr. Krumholz, a response by August 30th?
MR. KRUMHOLZ: Thank you, Judge. That's fine.
THE COURT: Also limited to 20 pages. Mr. Edwards, you may reply, which is you don't make your arguments all over, again, but if there's anything that Mr. Krumholz has said that you want to directly respond to, you may do that by September 16th. And that I will limit to seven pages. (Pause) And let 's set a hearing for -- is there a time of day that is more convenient for you, Mr. Edwards?
MR. EDWARDS: Anytime is good, Judge. I can work my schedule around.
THE COURT: Okay. Let's set it for hearing on October 24th. -Are you available, Mr. Krumholz?

[15][1] MR. KRUMHOLZ: No, sir, I'm in trial that --
[2] THE COURT: Okay.
[3] MR. KRUMHOLZ: -- that whole week.
[4] THE COURT: That week?All right. How about [5] either the 28th or 29th?
[6] MR. KRUMHOLZ: That will be fine.
[7] THE COURT: The 28th or 29th of October, Mr. [8] Edwards? Either one okay?
[9] MR. EDWARDS: Either one is okay for me.
[10] THE COURT: All right. Let's set it for October [11] 28th at 10: 30. And I' 11 allow each of you approximately -- [12] I'll set it for half an hour, so that gives each of you [13] approximately 15 minutes to make the argument you want. I'm [14] not going to be like an appeals court. I'm not going to [15] have red lights, but just gear your argument to about 15 [16] minutes. [17] Mr. Krumholz, are there jurisdictional problems? [18] Are you going to -- I mean, I don't think I saw it in any of [19] these briefs, but are you going to argue that Mr. Edwards [20] didn't exhaust his administrative remedies?
[21] MR. KRUMHOLZ: I don't believe so, Judge. We made [22] a jurisdictional argument to the extent he was seeking [23] damages, but I don't think we have a jurisdictional defense [24] to the APA claims as an APA claim.
[25] THE COURT: And as I remember --now, there may be **[16]**[1] penalties and interest -- but there's about -- the amount of [2] the loan is around $5,000?
[3] MR.KRUMHOLZ: Approximately, Judge.I think [4] that's with interest. The principal -- the original [5] principal amount, I believe, was $2500.
[6] THE COURT: Oh, 2500, yeah, I see it. Have you had [7] any discussions for --about settlement with Judge Watanabe [8] and that's going nowhere?
[9] MR. KRUMHOLZ: Well, I don't -- I wouldn't say it's [10] going nowhere. It hasn't -- it hasn't progressed since the [11] last time we talked, but that's not to say that we're at an [12] impasse. I think we can continue to talk.

[13] THE COURT: Okay. I'd like you to discuss with [14] each other the possibility of having another settlement [15] conference with Judge Watanabe. And if it makes sense, I'd [16] like you to have it before June 7th when Mr. Edwards has to [17] file his brief. But at any time that it makes sense and [18] that Judge Watanabe can schedule it, that would be great. [19] And see if you can't resolve the matter.

[20] MR. KRUMHOLZ: Shall we go up there after this, [21] Judge, to see if we can get a date.

[22] THE COURT: Mr. Edwards, what do you think? Do you [23] want to talk about a settlement with Mr. Krumholz in front [24] of Judge Watanabe?

[25] MR. EDWARDS: Sure, Your Honor. That'll be fine.

[17][1] THE COURT: Okay. Why don't you go up after this [2] nd talk to his chambers and see if he can schedule [3] something. [4] Okay. Mr. Edwards, is there anything else we [5] ought to talk about this morning?

[6] MR. EDWARDS: Well, just one question. When we-- [7] when me and Mr. Krumholz were discussingthe record, if [8] there are certain items that he has stated he will be [9] submitting from the motion to dismiss as part of the record [10] and I do not agree with that.

[11] THE COURT: That's what you should do --

[12] MR. EDWARDS: Before May 15th.

[13] THE COURT: On June -- by June 7th.

[14] MR. EDWARDS: Okay.

[15] THE COURT: If he submits what he thinks the record [16] is on May 15th. On June 7th --

[17] MR. EDWARDS: That's the date --

[18] THE COURT:--you submit additional things. I [19] didn't say that, but you -- if there's anything that's been [20] submitted by Mr. Krumholz that you don't agree with should [21] be in there, tell me that, too.

[22] MR. EDWARDS: Okay.

[23] THE COURT: So your response to what he has [24] submitted, objections and additions, should be submitted by [25] June 7th.

[18][1] MR. EDWARDS: That's it. Thank you.

[2] THE COURT: Mr. Krumholz?
[3] MR. KRUMHOLZ: Quickly, Judge, as a matter of [4] clarification, you referenced the amended complaint. I [5] believe that was stricken and never accepted by the Court, [6] but I presume you were referring to it as -- just as a [7] measure of his intent.
[8] THECOURT: Well, there was a first amended [9] complaint which I think I allowed. Am I wrong about that? [10] On August 2, 2001, I allowed a -- let me make sure, but I [11] believe I allowed the first amended complaint. And then [12] there was a second amended complaint which I didn't allow
[13] MR. KRUMHOLZ: Okay. I have a order of August 6th, [14] Judge, and it's striking complaint amendment 1, but there [15] may have been a previous one.
[16] THE COURT: Oh, oh, oh. Well, I --you --let me [17] -- what's the order date?
[18] MR. KRUMHOLZ: August 6th. [19] (Pause) I see a minute order of July 24th, Judge, [20] which gave Mr. Edwards additional time in which to file one.
[21] THE COURT: Right.
[22] MR. KRUMHOLZ: And I -- as far as I can tell, [23] complaint amendment 1 was never --
[24] THE COURT: You're right.
[25] MR. KRUMHOLZ: -- accepted.
[19][1] THE COURT: You're right.I didn't see that. So [2] we are working off the initial complaint, which is even [3] clearer -- which is even clearer that what Mr. Edwards was [4] seeking was judicial review of the agency. That's in [5] paragraph 2 of the initial complaint. So we're working off [6] the initial complaint. Thank you. Okay.
[7] MR. KRUMHOLZ: Thank you, Judge.
[8] THE COURT:All right. Thank you very much.
[9] THE CLERK: All rise. Court is in recess.
[10] (Whereupon, the within proceedings were then in [11] conclusion at 11:33 a.m. on April 22, 2002.)
[12] I certify the foregoing is a correct transcript, to the [13] best of my knowledge and belief, from the record of [14]

proceedings in the above-entitled matter.

[15] s/*Shirley J. Wood* *1-5-04*

[16] Signature of Transcriber Date

10th Cir.: #50 Order (Recall/Stay Denial) 9/8/04

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRUCE EDWARDS,
Plaintiff -Appellant,

v.

U.S. DEPARTMENT OF EDUCATION,
Defendant -Appellee.

No. 03-1502

ORDER

Filed September 8, 2004

Before **EBEL, KELLY,** and **MURPHY,** Circuit Judges.

The motion by Plaintiff-Appellant Bruce Edwards to recall and stay the mandate is DENIED.

Entered for the Court,
Patrick Fisher, Clerk

REHEARING ORDERS

EDUC: none

D. Colo.: #136 Order (Costs Rhg.) 11/24/03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO * * *

{Filed United States District Court Denver, Colorado NOV 24 2003 Gregory C. Langham Clerk s/*BA*}

Civil Action No. 01-BB-36 (MJW)

BRUCE EDWARDS,
Appellant, v.
UNITED STATES DEPARTMENT OF EDUCATION,
Appellee.

ORDER

This matter is before me on the appellant's **Objections to Order Filed 11/3/03 re Plaintiff's Request for Action Regarding Costs Upon Judg-**

ment . . . ., filed November 12, 2003. I construe this document as a motion to reconsider my Order dated November 3, 2003. A motion to reconsider is not available to allow a party merely to reargue issues previously addressed by the court when reargument merely advances new arguments or supporting facts which were available at the time of the original argument. See Cashner v. Freedom Stores, Inc., 98 F.3d 572, 576 (10th Cir. 1996).

Here, the bases for the appellant's Motion were presented, or could have been presented, at the time of his original motions. Consequently,

IT IS ORDERED that appellant's Motion is DENIED.

DATED November ~~18~~ 21, 2003.

BY THE COURT:

s/*Boyd N. Boland*

United States Magistrate Judge

#139 Order (Judgment Rhg.) 12/8/03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO * * *

{Filed United States District Court Denver, Colorado DEC -8 2003 Gregory C. Langham Clerk s/*GM*}

Civil Action No. 01-BB-36 (MJW)

BRUCE EDWARDS,

Appellant,

v.

UNITED STATES DEPARTMENT OF EDUCATION,

Appellee.

ORDER

This matter is before me on the appellant's **Motion to Open/Alter, and Motion for Relief from, 10/22/03 Judgment per 10/21/03 Order** (the "Motion"), filed November 5, 2003. I have reviewed the Motion, the appellee's response to the Motion, the appellant's Reply in support of the Motion, and the file. Being fully advised in the premises,

IT IS ORDERED that Motion is DENIED.

DATED December 8, 2003.

BY THE COURT:
s/*Boyd N. Boland*
United States Magistrate Judge

10th Cir.: #51 Order (Rhg./*En Banc*) 9/20/04

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRUCE EDWARDS,
Plaintiff -Appellant, v.
U.S. DEPARTMENT OF EDUCATION,
Defendant -Appellee.
No. 03-1502

ORDER
Filed September 20, 2004

Before **EBEL, KELLY,** and **MURPHY,** Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
PATRICK FISHER, Clerk of Court
by: s/*[illegible]* Deputy Clerk

JUDGMENT SOUGHT TO BE REVIEWED

EDUC: Tax Refund Offset 9/22/00

{• TREASURY • FINANCIAL MANAGEMENT SERVICE }

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
P.O. Box 1686
Birmingham, Alabama 35201-1686

THIS IS NOT A BILL - PLEASE RETAIN FOR YOUR RECORDS

09/22/00

BRUCE & DANI B EDWARDS
1001 EMPORIA ST
AURORA CO 80010-3825

Dear BRUCE & DANI B EDWARDS:

As authorized by Federal law, we applied all or part of your Federal payment to a debt you owe. The government agency (or agencies) collecting your debt is listed below.

U.S. DEPARTMENT OF EDUCATION
FEDERAL OFFSET UNIT
P.O. BOX 618064 CHICAGO IL 60661-8064
800-621-3115 (800) 621-3115
PURPOSE: Non-Tax Federal Debt
TIN Num: [* * * SSN] TOP Trace Num: A06073513
Acct Num: 0[* * * SSN]
Amount This Creditor: $234.32 Creditor: 05 Site: 90

The Agency has previously sent notice to you at the last address known to the Agency. That notice explained the amount and type of debt you owe, the rights available to you, and that the Agency intended to collect the debt by intercepting any Federal payments made to you, including tax refunds. **If you believe your payment was reduced in error or if you have questions about this debt, you must contact the Agency at the address and telephone number shown above.** The U. S. Department of the Treasury's Financial Management Service cannot resolve issues regarding debts with other agencies.

We will forward the money taken from your Federal payment to the Agency to be applied to your debt balance; however, the Agency may not receive the funds for several weeks after the payment date. If you intend to contact the Agency, please have this notice available.

s/*C A Wilson*
Charles A. Wilson
Department of the Treasury, Financial Management Service (800) 304-3107

PAYMENT SUMMARY
PAYEE NAME: BRUCE & DANI B EDWARDS
PAYMENT BEFORE REDUCTION: $234.32
TOTAL AMOUNT OF THIS REDUCTION: $234.32

PAYING FEDERAL AGENCY: Internal Revenue Service (See Insert on Tax Refund Offsets for Additional Information)
PAYMENT DATE: 09/22/00
PAYMENT TYPE: Check.

FOR OFFICIAL USE ONLY:

0000000087A06073513[***SSN***]00029209230ALTR-P01 BRUC000087

D. Colo.: #122 Judgment 10/22/03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO * * *

{Filed United States District Court Denver, Colorado OCT 22 2003 Gregory C. Langham Clerk s/*BA*}

{EOD United States District Court Denver, Colorado OCT 22 2003 Gregory C. Langham Clerk}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Appellant, v.
UNITED STATES DEPARTMENT OF EDUCATION,
Appellee.

JUDGMENT

Pursuant to and in accordance with the Order entered by Magistrate Judge Boyd N. Boland on October 21, 2003, incorporated herein by reference,

IT IS ORDERED that this action is REMANDED to the Department of Education for further administrative proceedings consistent with this Order.

DATED October 22, 2003.

FOR THE COURT:
GREGORY C. LANGHAM, CLERK
By: s/*Stephen P. Ehrlich*
Stephen P Ehrlich, Chief Deputy Clerk

#124 Order (Costs) 11/3/03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado NOV 3 2003 Gregory C. Langham Clerk s/*BA*}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Appellant,
v.
UNITED STATES DEPARTMENT OF EDUCATION,
Appellee.

ORDER

This matter is before me on Mr. Edwards' **Request for Action Regarding Costs Upon Judgment Dated 10/21/01,** filed October 30, 2003. On October 22, 2003, judgment entered and this action was remanded to the Department of Education for further administrative proceedings. Mr. Edwards seeks costs pursuant to Local Rule 54.1, D.C.COLO.LCivR.

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs. . . ." Fed.R.Civ.P.54(d)(1). "The allowance or disallowance of costs to a prevailing party is within the sound discretion of the district court." Zeran v. Diamond Broadcasting, Inc., 203 F.3d 714, 722 (10th Cir. 2000) (citation omitted). "However, this discretion is limited in two ways. First, it is well established that Rule 54 creates a presumption that the district court will award costs to the prevailing party. Second, the district court must provide a valid reason for not awarding costs." Id. (quotation and citation omitted).

Here, Mr. Edwards sought monetary damages, injunctive relief, and a declaration that the DOE's claim against him is invalid. Mr. Edwards was awarded none of this relief. To the contrary, the case was remanded to the Department of Education ("DOE") for further proceedings due to the inadequacy of the administrative record. Consequently, Mr. Edwards is not a prevailing party and he is not entitled to costs.

IT IS ORDERED that Mr. Edwards' Request for Action Regarding Costs Upon Judgment Dated 10/21/01 is DENIED.

IT IS FURTHER ORDERED that each party shall bear its own costs.

DATED October 31, 2003.

BY THE COURT:

s/*Boyd N. Boland*

United States Magistrate Judge

10th Cir.: #40 Order (Dismissal) 8/5/04

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRUCE EDWARDS,

Plaintiff -Appellant, v.

U.S. DEPARTMENT OF EDUCATION,

Defendant -Appellee.

No. 03-1502 (D.C. No. 01-BB-36(MJW))

ORDER

Filed August 5, 2004

Before **EBEL, KELLY,** and **MURPHY,** Circuit Judges.

Plaintiff Bruce Edwards initiated an action in district court seeking judicial review of the actions of Defendant United States Department of Education (DOE) in enforcing a student loan debt. In an October 21, 2003 Order, a United States magistrate judge remanded the action to the DOE for further proceedings, directing the agency to "address Mr. Edwards' concerns regarding the validity of the debt and the collection of the debt ...create a record which reflects the issues before it, its decisions regarding the issues, and the grounds upon which the decisions were based." Id. at 13.

The appeal is jurisdictionally defective. An order remanding an action to an administrative agency for significant further proceedings is not a final, appealable decision under 28 U.S.C. § 1291 or under any recognized exception to the final judgment rule. *See Baca-Prieto v. Guigni,* 95 F.3d 1006, 1008 (10th Cir. 1996); *Loffland Brothers Co. v. Rougeau,* 655 F.2d 1031, 1032 (10th Cir. 1981). If still aggrieved, Plaintiff may appeal at the conclusion of the administrative proceedings on remand.

The motion to dismiss is GRANTED. The appeal is DISMISSED. All pending motions are DENIED. The mandate shall issue forthwith.

Entered for the Court,
Patrick Fisher, Clerk

BLACK-LETTER LAW INVOLVED

Constitutional Provisions

Article III Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Bill of Rights Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Statutes

Pub. L. 99-272 4/27/86

100 Stat. 339 § 16012(a)(3)

Disbursement of Student Loans to Institutions Required
(a) FISL Loans Requirement.—Section 427(a)(2) of the [Higher Education] Act is amended— * * *

(3) by amending subparagraph (I) to read as follows:

"(I) the funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subparagraph shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check; and".

100 Stat. 356 § 16041(b)

Effective Dates * * *
(b) Prospective Provisions; Loans.—(1) The amendments made by sections 16012, 16027, and 16028 shall apply to loans to cover the cost of attendance for any period of enrollment beginning on or after January 1, 1986.

5 U.S.C. 551

Definitions

For the purpose of this subchapter -

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include -

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia; or except as to the requirements of section 552 of this title -

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allow-

ances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;
(5) "rule making" means agency process for formulating, amending, or repealing a rule;
(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;
(7) "adjudication" means agency process for the formulation of an order;
(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;
(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;
(10) "sanction" includes the whole or a part of an agency -
(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;
(B) withholding of relief;
(C) imposition of penalty or fine;
(D) destruction, taking, seizure, or withholding of property;
(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
(F) requirement, revocation, or suspension of a license; or
(G) taking other compulsory or restrictive action;
(11) "relief" includes the whole or a part of an agency -
(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;
(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or
(C) taking of other action on the application or petition of, and beneficial to, a person;
(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and
(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

5 U.S.C. 552a

(a) Definitions. - For purposes of this section -
(1) the term "agency" means agency as defined in section 552(e)[81] of this title;
(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;
(3) the term "maintain" includes maintain, collect, use, or disseminate;
(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

* * *

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

---

[81] Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99-570.

(8) the term "matching program" –

(A) means any computerized comparison of –

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of –

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or * * *

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

* * *

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, * * *

(b) Conditions of Disclosure. - No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be -

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
(2) required under section 552 of this title;
(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;
(4) to the Bureau of the Census * * *;
(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research * * *;
(6) to the National Archives and Records Administration * * *;
(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual * * *;
(9) to either House of Congress * * *;
(10) to the Comptroller General, * * *; or
(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) Accounting of Certain Disclosures. - Each agency, with respect to each system of records under its control, shall -
(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of –
(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and
(B) the name and address of the person or agency to whom the disclosure is made;
(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the

record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. - Each agency that maintains a system of records shall -

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and –

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either –

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. - Each agency that maintains a system of records shall -

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual –

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include –

* * *

(D) each routine use of the records contained in the system,including the categories of users and the purpose of such use; * * *

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment * * *;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made

available to any person under compulsory legal process when such process becomes a matter of public record;
(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;
(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;
(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

* * *

(g)(1) Civil Remedies. - Whenever any agency
(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;
(B) refuses to comply with an individual request under subsection (d)(1) of this section;
(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of -

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a

person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

* * *

(m)(1) Government Contractors. - When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section,[82] shall be considered to be an employee of an agency.

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[82] Section 8 of Pub. L. 93-579 provided that: "The provisions of this Act (enacting this section and provisions set out as notes under this section) shall be effective on and after the date of enactment (Dec. 31, 1974), except that the amendments made by sections 3 and 4 (enacting this section and amending analysis preceding section 500

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

* * *

(p) Verification and Opportunity to Contest Findings. –

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until -

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that –

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under

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of this title) shall become effective 270 days following the day on which this Act is enacted."

subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of -

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

* * *

5 U.S.C. 701

Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that -

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter -

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include * * *

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

5 U.S.C. 702

Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

5 U.S.C. 703

Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive

opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

5 U.S.C. 704

Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

5 U.S.C. 705

Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

5 U.S.C. 706

Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and

determine the meaning or applicability of the terms of an agency action. The reviewing court shall –

(1) compel agency action unlawfully withheld or unreasonablydelayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be -

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

26 U.S.C. 6402(d)

(d) Collection of debts owed to Federal agencies

(1) In general

Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall –

(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

* * *

28 U.S.C. 636(c)

(c) Notwithstanding any provision of law to the contrary –

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

28 U.S.C. 1331

Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. 1339

Postal matters

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service.

28 U.S.C. 1346(a)

United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

28 U.S.C. 1361

Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

28 U.S.C. App./Fed. R. Civ. P. Rule 73

Magistrate Judges; Trial by Consent and Appeal

(a) POWERS; PROCEDURE. When specially designated to exercise such jurisdiction by local rule or order of the district court andwhen all parties consent thereto, a magistrate judge may exercise the authority provided by Title 28, U.S.C. § 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in

accordance with the requirements of Title 28, U.S.C. § 636(c)(5).[83]

(b) CONSENT. When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate judge of civil jurisdiction over the case, as authorized by Title 28, U.S.C. § 636(c). If, within the period specified by local rule, the parties agree to a magistrate judge's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

A district judge, magistrate judge, or other court official may again advise the parties of the availability of the magistrate judge, but, in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. A district judge or magistrate judge shall not be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate judge.

The district judge, for good cause shown on the judge's own initiative, or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate judge under this subdivision.

(c) APPEAL. In accordance with Title 28, U.S.C. § 636(c)(3), appeal from a judgment entered upon direction of a magistrate judge in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.[84]

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[83] NOTES OF ADVISORY COMMITTEE ON RULES—1983: * * * In view of 28 U.S.C. § 636(c)(1) and this rule, it is unnecessary to amend Rule 58 to provide that the decision of a magistrate is a "decision by the court" for the purposes of that rule and a "final decision of the district court" for purposes of 28 U.S.C. § 1291 governing appeals.

[84] NOTES OF ADVISORY COMMITTEE ON RULES—1983: * * * Under 28 U.S.C. § 636(c)(3), the normal route of appeal from the judgment of a magistrate--* * *--is an appeal by the aggrieved party "directly to the appropriate United States court of appeals from the

31 U.S.C. 3701

Definitions and application

* * *

(b)(1) In subchapter II of this chapter and subsection (a)(8) of this section, the term "claim" or "debt" means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency. A claim includes, without limitation -

(A) funds owed on account of loans made, insured, or guaranteed by the Government, including any deficiency or any difference between the price obtained by the Government in the sale of a property and the amount owed to the Government on a mortgage on the property,

(B) expenditures of nonappropriated funds, including actual and administrative costs related to shoplifting, theft detection, and theft prevention,

(C) over-payments, including payments disallowed by audits performed by the Inspector General of the agency administering the program,

(D) any amount the United States is authorized by statute to collect for the benefit of any person,

(E) the unpaid share of any non-Federal partner in a program involving a Federal payment and a matching, or cost-sharing, payment by the non-Federal partner,

(F) any fines or penalties assessed by an agency; and

(G) other amounts of money or property owed to the Government.

(2) For purposes of section 3716 of this title, each of the terms "claim" and "debt" includes an amount of funds or property owed by a person to a State (including any

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judgment of the magistrate in the same manner as an appeal from any other judgment of a district court." The quoted statutory language indicates Congress' intent that the same procedures and standards of appealability that govern appeals from district court judgments govern appeals from magistrates' judgments.

past-due support being enforced by the State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

* * *

31 U.S.C. 3720A

Reduction of tax refund by amount of debt

(a) Any Federal agency that is owed by a person a past-due, legally enforceable debt (including debt administered by a third party acting as an agent for the Federal Government) shall, and any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h), owed such a debt may, in accordance with regulations issued pursuant to subsections (b) and (d), notify the Secretary of the Treasury at least once each year of the amount of such debt.

(b) No Federal agency may take action pursuant to subsection (a) with respect to any debt until such agency –

(1) notifies the person incurring such debt that such agency proposes to take action pursuant to such paragraph with respect to such debt;

(2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;

(3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable;

(4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts (determined on a government-wide basis) to obtain payment of such debt; and

(5) certifies that reasonable efforts have been made by the agency (pursuant to regulations) to obtain payment of such debt.

(c) Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such person. If the Secretary of the Treasury finds that any such amount is payable, he shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency, and notify such agency of the individual's home address.

(d) The Secretary of the Treasury shall issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of debt to which the reduction procedure established by subsection (c) may be applied and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

* * *

(h)(1) The disbursing official of the Department of the Treasury –

(1)[sic] shall notify a taxpayer in writing of –

(A) the occurrence of an offset to satisfy a past-due legally enforceable nontax debt;

(B) the identity of the creditor agency requesting the offset; and

(C) a contact point within the creditor agency that will handle concerns regarding the offset;

* * *

42 U.S.C. 1981

Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S.C. 1988(a)

Proceedings in vindication of civil rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not

inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. * * *

Regulations

31 C.F.R. 285.2

Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

(a) Definitions. For purposes of this section:

Creditor agency means a Federal agency owed a claim that seeks to collect that claim through tax refund offset.

Debt or claim refers to an amount of money, funds, or property which has been determined by an agency official to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of this section, the terms "claim" and "debt" are synonymous and interchangeable and includes debt administered by a third party acting as an agent for the Federal Government.

Debtor means a person who owes a debt or claim. The term "person" includes any individual, organization or entity, except another Federal agency.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any tax on the part of the person who made the overpayment.

(b) General rule.

(1) A Federal agency (as defined in 26 U.S.C. 6402(g)) that is owed by a person a past-due, legally enforceable nontax debt shall notify FMS of the amount of such debt for collection by tax refund offset. However, any agency subject to section 9 of the Act of May 18, 1933 (16 U.S.C. 831h) owed such a debt may, but is not required to, notify FMS of the amount of such debt for collection by tax refund offset.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name (or derivation of the name, known as a "name control") of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due, legally enforceable debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

* * *

(5) A creditor agency is not precluded from using debt collection procedures, such as wage garnishment, to collect debts that have been submitted to FMS for purposes of offset under this part. Such debt collection procedures may be used separately or in conjunction with offset collection procedures.

(c) Regulations. Prior to submitting debts to FMS for collection by tax refund offset, Federal agencies shall promulgate temporary or final regulations under 31 U.S.C. 3716 and 31 U.S.C. 3720A, governing the agencies' authority to collect debts by administrative offset, in general, and offset of tax refund payments, in particular.

(d) Agency certification and referral of debt

(1) Past-due, legally enforceable debt eligible for tax refund offset. For purposes of this section, when a

Federal agency refers a past-due, legally enforceable debt to FMS for tax refund offset, the agency will certify to FMS that:

(i) The debt is past-due and legally enforceable in the amount submitted to FMS and that the agency will ensure that collections are properly credited to the debt;

(ii) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the agency's right of action accrues;

(iii) The creditor agency has made reasonable efforts to obtain payment of the debt in that the agency has:

(A) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations, to the extent that collection of the debt by administrative offset is not prohibited by statute;

(B) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(C) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(D) Provided the debtor with an opportunity to make a written agreement to repay the amount of the debt;

(iv) The debt is at least $25; and * * *

(2) Pre-offset notice and consideration of evidence for past-due, legally enforceable debt.

(i) For purposes of paragraph (d)(1)(iii)(B) of this section, a creditor agency has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the agency's records related to the debt. Agencies may, but are not

required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), or (5).

(ii) For purposes of paragraph (d)(1)(iii)(C) of this section, if the evidence presented by the debtor is considered by an agent of the creditor agency, or other entities or persons acting on the agency's behalf, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the agency of any unresolved dispute. The agency must then notify the debtor of its decision.

(3) Referral of past-due, legally enforceable debt. A Federal agency will submit past-due, legally enforceable debt information for tax refund offset to FMS in the time and manner prescribed by FMS. For each debt, the creditor agency will include the following information:

(i) The name and taxpayer identifying number (as defined in 26 U.S.C. 6109) of the debtor who is responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due;

(iv) The designation of the Federal agency or subagency referring the debt; and* * *

(4) Correcting and updating referral. If, after referring a past-due, legally enforceable debt to FMS as provided in paragraph (d)(3) of this section, a creditor agency determines that an error has been made with respect to the information transmitted to FMS, or if an agency receives a payment or credits a payment to the account of a debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the agency shall promptly notify FMS and make the appropriate correction of the agency's records. Creditor agencies will provide certification as required under paragraph (d)(1) of this section for any increases to amounts owed.

* * *

(e) Priorities for offset. (1) A tax refund payment shall be reduced * * * second, by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d), 31 U.S.C. 3720A and this section; * * *

(f) Post-offset notice to the debtor, the creditor agency, and the IRS. (1)(i) FMS will notify the payee(s) to whom the tax refund payment is due, in writing of:

(A) The amount and date of the offset to satisfy a past-due, legally enforceable nontax debt;

(B) The creditor agency to which this amount has been paid or credited; and

(C) A contact point within the creditor agency that will handle concerns or questions regarding the offset.

(ii) The notice in paragraph (f)(1)(i) of this section will also advise any non-debtor spouse who may have filed a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (g) of this section.

(2) FMS will advise each creditor agency of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency.

* * *

(h) Disposition of amounts collected. FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under paragraph (i) of this section, to the creditor agency's account. If an erroneous payment is made to any agency, FMS will notify the creditor agency that an erroneous payment has been made. The agency shall pay promptly to FMS an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to such agency have been paid).

(i) Fees. The creditor agency will reimburse FMS and the IRS for the full cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. To the extent allowed by law, creditor agencies may add the offset fees to the debt.

(j) Review of tax refund offsets. Any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(d) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax. Any legal, equitable, or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal creditor agency to which the amount of the reduction was paid.

* * *

(k) Access to and use of confidential tax information. Access to and use of confidential tax information in connection with the tax refund offset program are restricted by 26 U.S.C. 6103. Generally, agencies will not receive confidential tax information from FMS. To the extent such information is received, agencies are subject to the safeguard, recordkeeping, and reporting requirements of 26 U.S.C. 6103(p)(4) and the regulations thereunder. The agency shall inform its officers and employees who access or use confidential tax information of the restrictions and penalties under the Internal Revenue Code for misuse of confidential tax information.

(l) Effective date. This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1998.

34 C.F.R. 30.33

What procedures does the Secretary follow for IRS tax refund offsets?

(a) If a named person owes a debt under a program or activity of the Department, the Secretary may refer the debt for offset to the Secretary of the Treasury after complying with the procedures in Sec. Sec. 30.20-30.28, as modified by this section.

(b) Notwithstanding Sec. 30.22(b), the notice sent to a debtor under Sec. 30.22 informs the debtor that:

(1) The debt is past due;

(2) The Secretary intends to refer the debt for offset to the Secretary of Treasury;

(3) The debtor has an opportunity to:

(i) Inspect and copy Department records regarding the existence, amount, enforceability, or past-due status of the debt;

(ii) Obtain a review within the Department of the existence, amount, enforceability, or past-due status of the debt;

(iii) Enter into a written agreement with the Secretary to repay the debt; and

(4) The debtor must take an action set forth under paragraph (b)(3) by a date specified in the notice.

(c) Notwithstanding Sec. 30.23(a), if a debtor wants to inspect and copy Department records regarding the existence, amount, enforceability, or past-due status of the debt, the debtor must:

(1) File a written request to inspect and copy the records within 20 days after the date of the notice provided under Sec. 30.22; and

(2) File the request at the address specified in that notice.

(d) Notwithstanding the time frame under Sec. 30.24(a), if a debtor wants a review under that paragraph, the debtor must file a request for review at the address specified in the notice by the later of:

(1) Sixty-five days after the date of the notice provided under Sec. 30.22;

(2) If the debtor has requested an opportunity to inspect and copy records within the time period specified in paragraph (c) of this section, 15 days after the date on which the Secretary makes available to the debtor the relevant, requested records; or

(3) If the debtor has requested a review within the appropriate time frame under paragraph (d) (1) or (2) of this section and the Secretary has provided an initial review by a guarantee agency, seven days after the date of the initial determination by the guarantee agency.

(e) Notwithstanding the time frames under Sec. 30.24(d), a debtor shall file the documents specified under that paragraph with the request for review.

(f) Notwithstanding the time frame under Sec. 30.27(a), a debtor must agree to repay the debt under terms acceptable to the Secretary and make the first payment due under the agreement by the latest of:

(1) The seventh day after the date of decision of the Secretary if the debtor requested a review under Sec. 30.24;

(2) The sixty-fifth day after the date of the notice under Sec. 30.22(b), if the debtor did not request a review under Sec. 30.24, or an opportunity to inspect and copy records of the Department under Sec. 30.23; or

(3) The fifteenth day after the date on which the Secretary made available relevant records regarding the debt, if the debtor filed a timely request under Sec. 30.23(a).

34 C.F.R. 682.401(b)(6) [1984-85 ed., p. 491]

Disbursement requirements.

(i) The lender shall disburse the loan funds by means of a check payable to the borrower or—if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. For

this purpose, a check is a draft drawn on a bank and payable on demand and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement.
(ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf. (iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower.

* * *

OTHER ESSENTIAL MATERIAL

EDUC: First Independent Trust note[85]

California Student Aid Commission "Guarantor"
Guaranteed Student Loan Program
PROMISSORY NOTE AND DISCLOSURE STATEMENT
Borrower Name: BRUCE EDWARDS 007926
Social Security Number: [* * * SSN]
O.E. lender Code Number: 828374 8700766
Lending Institution Name & Address:
FIRST INDEPENDENT TRUST
1020 12th St Sacramento CA, 95814-0000
ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.
A. Prior to Repayment 8.11 %
B. During Repayment 8.00%
Amount Financed
The Amount of credit provided to me. $ 2,341.67
Prepayment: If payoff early, I will not have to pay a penalty and I may be entitled to a refund of part of the Finance Charge. Late Charge: If a payment is late, I may be charged $5.00 or 5% of the payment, whichever is less.

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[85] From most legible version, under 5/29/01 letter from Vanessa Santos, EDUC OGC, Washington, to local counsel; original copy is D. Colo. Enclosure 2 of #28 brief in support of #27 motion for leave to file amended complaint, entered 7/2/01

I must read the entire promissory note for any additional information about nonpayment, default, any required payment in full before the scheduled date and prepayment refunds and penalties.

ITEMIZATION OF THE AMOUNT FINANCED

Loan Amount	$2,500.00
less: Prepaid Finance Charge, Includes:	$ 158.33
Guarantee Fee	$ 33.33
Origination Fee (5.00 % of loan Amount)	$125.00
Equals: Amount Financed	$ 2,341.67

Disbursement Schedule

First/entire Estimated Date of Disbursement 7/04/85

Loan Amount $2,500.00

PREPAID FINANCE CHARGE Guarantee Fee $33.33

Origination Fee $25.00

Amount Financed $2341.6[7]

Second N/A N/A N/A N/A N/A

Third N/A N/A N/A N/A N/A Date Produced 6/04/85

I. PROMISE TO PAY: I promise to pay to you or to your order when this Note becomes due as set forth in Paragraph II, the "Loan Amount" as shown in "Itemization of the Amount Financed" to the extent it is advanced to me plus Interest as set forth in Paragraph III, and any other charges which may become due as provided in Paragraph VI.

II. DATE NOTE BECOMES DUE: This Note will become due on the earliest of the following dates:

1) 6 months after I stop carrying, at an eligible school approved by the Guarantor, at least one-half of the normal full-time academic workload required by such school, or

2) If at have not already enrolled on the basis (at least half-time) shown in my application for this loan, the last day set by the school named in my application for which I can begin to get academic credit for the period covered by this loan even though I may plan to enroll at a later date within the loan period.

III. INTEREST: I agree to pay an amount equivalent to simple interest on the unpaid balance at the rate of 8.00% per annum from the date you advance the loan until the loan is paid in full. You will not collect from me any interest which the United States Government will pay for me.

I will pay you at the end of each MONTH (month, quarter) any interest due from me, or you may allow me to defer the payment of this interest until this Note becomes due. When this Note becomes due I may either pay the total interest due or such interest will be added to the principal balance due to be repaid, with interest, in installments. All payments will be made to your address given above or to any other address you notify me of.

{JUN 20 1 26 PM '85}

IV. GUARANTEE-ORIGINATION FEES: I will pay you a guarantee fee in the amount shown in "Itemization of the Amount Financed" which you will forward to the California Student Aid Commission lo pay for its guarantee of this Note. The guarantee fee is equal to 1% per annum of the amount of this loan from the disbursal date until 12 months after the graduation/ completion date given on my application for this loan. No part of this guarantee fee will be repaid to me unless the total loan is repaid within 60 days after the disbursal date, in which case the total fee will be returned. I will pay you a loan origination fee authorized by federal law in the amount disclosed in the "Itemization of the Amount Financed" above. If any loan disbursement check is returned uncashed to the lender, I will be entitled to a refund of any loan origination fee paid in respect to such disbursement. The guarantee fee and the loan origination fee may both be deducted from the proceeds of my loan.

I WILL NOT SIGN THIS NOTE BEFORE READING IT, INCLUDING THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED. I WILL NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACE. I

AM ENTITLED TO AN EXACT COPY OF THIS NOTE AND ANY AGREEMENT I SIGN. BY SIGNING THIS NOTE I ACKNOWLEDGE THAT IT CONTAINS NO BLANK SPACE AND THAT I HAVE RECEIVED AN EXACT COPY HEREOF. I HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS NOTE WITHOUT PENALTY.

s/*Bruce Edwards* *June 17, 1985* *1255 19th*
Borrower's Signature Date Signed Borrower Permanent Address

Signature of Co-Signer (if any) Date

NOTICE: SEE OTHER SIDE OF THIS FORM FOR IMPORTA { **EDWARDS,BRUCE,**
CLAIM NO 1993090300228 05-25-93
CGSLP 130 (REV. 10/82) **SSN [***SSN] TD 1** }

V. WHOLE LOAN DUE: I will be in default and you have the right to give me notice that the whole outstanding principal balance plus any unpaid interest I owe is due and payable at once (subject to any law which give me a right to cure my default) if:
1) I fail to make a payment to you; or
2) Any payment has not reached you within 10 days after it is due; or
3) I fail to notify you of a change in my name, address, or school enrollment status within 10 days; or
4) I break any of my other promises under this agreement; or
5) Any bankruptcy proceeding is begun by or against me, or I assign any of my assets for the benefit of my creditors; or
6) I make any false written statement in applying for this loan or for an extension or deferment of this loan. After sending such notice to me, you will have the right, without further notice, to take the outstanding balance out of my checking and/or

savings account I have with you if permitted by law, but not out of the proceeds of any other property of mine which you have a right to take because of any other agreement between you and me. If I default, I will be required to pay interest on this loan as provided in Paragraph III from the date of default since the United States Government will stop paying such interest on my behalf.

VI. COLLECTION COSTS:

1) I agree to pay you reasonable amounts permitted by law, including the * * *[illegible] of an outside attorney and court costs, which you incur in collecting any amount I owe under the Note which is not paid when due.

2) If any payment has not reached you within 10 days after its due date you may, if permitted by law, bill me for a * * * charge * * * rate permitted.

{ **"All right, title and interest of the California Student Aid Commission is hereby assigned in favor of the United States Department of Education by execution of this endorsement."**

s/*Theodosia Hoppers* **OCT 30 1992**

Signature **Date**

Theodosia A. Hoppers, Manager
Collection Services Branch
California Student Aid Commission
P.O. Box 510023 Sacramento, CA 94245-0023 }

VII. ADDITIONAL AGREEMENTS:

1) The proceeds of this loan will be used only for * * *al expenses at the school listed in my application.

2) I will send written notice * * * or a * * * of this Note, within * * * days after any change in my name * * * or school enrollment status.

3) Any notice required to be sent to me will be effective when mailed by first class mail to the latest address you have for me* * * is required for any Co-Signer.

4) Your failure to enforce or insist that I comply with * * *erm of this Note * * * not a waiver of your rights. No provision * * * an * * * or modified except in writing.

5) If the California Student Aid Commission is required, under its guarantee to repay my loan(s) because I have defaulted, the California Student Aid Commission will become the owner of this Note and as my creditor will have all the rights of the original lender to enforce this Note against me.

6) I understand that I must repay this Note even though I may be under 18 years of age.

7) I understand my loan will be cancelled if I die or become totally and permanently disabled.

8) In this Note, the words I, me and my, mean each and all of those who signed it. If more than one person signs this Note, each person will be liable up to the full amount of the loan. You, your and yours, mean the lender and any other owner of this Note.

VIII. DEFERMENT: You will let me pay interest only, if such interest is not paid by the United States Government, and defer making principal payments on this Note as provided below if my repayment period has begun, I am not in default, and can prove to you that I qualify for the deferment:

1) While I am enrolled:

a) in an eligible school approved by the California Student Aid Commission in the normal full-time academic workload, as determined by that school, unless I am not a citizen or national of the Untied States and am studying at a school not located in the United States; or

b) in a graduate fellowship program approved by the Secretary of Education; or

c) in a rehabilitation training program for disabled individuals approved by the Secretary of Education; or

d) as a full-time student at either an institution of higher education or vocational school which is operated by an agency of the Federal Government.

2) For a period not exceeding 3 years for each of the following while I am:

a) On active duty in the Armed Forces of the United States or serving as an Officer in the Commissioned Corps of the Untied States Public Health Service; or

b) Serving as a Peace Corps volunteer; or

c) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 (e.g. VISTA); or

d) Providing service as a full-time volunteer for an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, which the Secretary of Education has determined is comparable to service in the Peace Corps or ACTION programs.

3) For one or more periods not exceeding 3 years while I am:

a) Temporarily totally disabled, as established by affidavit of a qualified physician; or

b) Unable to work because I must care for a spouse who is temporarily totally disabled as established by affidavit of a qualified physician.

4) For a period not exceeding 2 years while I am serving an internship that is needed to gain professional recognition required to begin professional practice or service.

5) For a single period not exceeding one year while I am conscientiously seeking but unable to find full time employment in the United States.

For loans in repayment and disbursed before October 1, 1981, a six-month post deferment grace period is provided following any period of authorized deferment, or combination thereof, before principal payments are required to resume. If my loan is disbursed on or after October 1, 1981,

and if I have received an authorized deferment, I am not eligible for a six-month post deferment grace period for such loan(s).

IX. REPAYMENT IN INSTALLMENTS: I can repay the total amount due on this Note in installments, with interest a the rate indicated in "Annual Percentage Rate During Repayment" on the unpaid balance from the due date of this Note until the loan is paid in full, unless:

1) The whole loan is due, as described in Paragraph V; or

2) This note has become due because of item 2 of Paragraph II. Not less than four months prior to the due date of this Note I will sign for you a Repayment Schedule which shows the repayment terms. The Repayment Schedule will become part of this Note and any co-signer who signs the Repayment Schedule will also be obligated to pay this Note. The Repayment Schedule may include all loans I have received from you under the California Student Aid Commission, Guarantor of this Note.

The Repayment Schedule will require me to make monthly payments for a period of not less than 5 nor more than 10 years after this note becomes due. The repayment period will not be longer than 15 years from the date of my original Note not counting periods for which I am granted any authorized deferment outlined in Paragraph VIII. My original in-school period is counted in this 15 year requirement. At my option I may agree to a repayment period that is shorter than 5 years. However, I may at anytime later have the repayment period extended so that the total repayment period is not less than 5 years. If my loan(s) is/are disbursed prior to October, 1981, my total payments for any year of the repayment period on all my loans under the Guaranteed Student Loan Program (GSLP), the Guaranteed Parental Loan

Program (GPLP) or the PLUS (CLAS) Program under Title IV, Part B of the Higher Education Act shall not be less than $360 per year, including payment by my spouse on any loan under such loan programs (or the balance of all such loans plus accrued interest if less than $360) even though this may result in a repayment period shorter than 5 years. If my loan(s) is/are disbursed on or after October 1, 1981, my total payments for any year of the repayment period on all my loans under the Guaranteed Student Loan Program (GSLP), the Guaranteed Parental Loan Program (GPLP) or the PLUS (CLAS) Program under Title IV, part B of the Higher Education Act shall not be less than $600 per year, including payments by my spouse on any loan under such loan programs (or the balance of all such loans plus accrued interest if less than $600) even though this may result in a repayment period shorter than 5 years.

X. TRANSFER OF LOAN TO NEW HOLDER: Under the condition set forth in Federal regulations governing the Guaranteed Student Loan Program, this loan may be transferred to a holder other than the original lender. If such transfer takes place, I will have the same rights and responsibilities with regard to the new holder that I had with regard to the original lender. This Promissory Note is not intended to be a negotiable instrument under the Uniform Commercial Code as accepted *** any State, and a new holder of the Promissory Note is not a holder in due course.

XI. CREDIT BUREAU NOTIFICATION: If I default on this loan, the California Student Aid Commission, using the following procedure, may disclose information about the loan to credit bureau organizations after *** Commission has attempted to collect its debt from me.

If the Commission knows my address, the Commission must *** that such disclosure will be made

unless I begin or resume repayment. If I do not begin or resume repayment within 30 days of receipt of this notice, or such longer period as the Commis-sion may specify, the Commission will disclose infor-mation about the loan to credit bureau organizations.

If the Commission does not know my address, the Commission may disclose information about the loan to credit bureau organizations in order to learn my address.

The lender must provide information on the repayment status of this loan to any credit bureau organization upon my request. If not otherwise prohibited by law, the lender may disclose information about the status of this loan to any credit bureau.

XII. GENERAL: The lender must provide me with a copy of the Promissory Note. The terms of this Promissory Note will be interpreted according to the law (20 U.S.C. 1071 to 1087-2) and Federal Regulations (34 CFR Part 682) that govern the GSLP. The lender must show me the Federal Regulations upon request.

I will use all of the proceeds that I receive from this loan solely for tuition and other reasonable and authorized educational expenses, including room and board, fees, books, supplies and equipment, laboratory expenses, and transportation and commuting costs.

I understand that if I am a correspondence student, this loan is covered by Federal regulations setting forth separate rules about what the loan proceeds may be used for and when my repayment period will begin. I am not required to provide security for this loan.

NOTICE: SEE OTHER SIDE OF THIS FORM FOR IMPORTANT INFORMATION ABOUT THIS LOAN.

CGSLP 130 (REV. 10/82)

D. Colo.: #1 Complaint 1/8/01

{Filed United States District Court Denver, Colorado
2001 JAN-8 AM 11:10 James R. Manspeaker Clerk By ___ Dep. Clk.}

01-*B*-0036

Bruce Edwards, PLAINTIFF v.
U.S. Department of Education, DEFENDANT

COMPLAINT

1. Jurisdiction founded on questions regarding Department of Education implementation of statutory requirements, regulations, and code, as cited in this Complaint.
2. Pursuant to 5USC704, p. 73 (1996 West Group Edition), Plaintiff seeks judicial review of Defendant's final agency action, taken without completing an offered and timely requested agency review [copy of Financial Management Services 9/22/00 notice of Treasury offset attached as "Exhibit A"], and of related collection activities that excluded requirements of agency review of subject claim for over four years after initial demand and dispute.
3. The disputed amount has not been determined to be a valid "claim" or "debt" owed to the United States by an appropriate official of the Federal Government per 31USC3701(b)(1), p. 184 (2000 Cumulative Annual Pocket Part to 1983 West Group Edition [hereafter called "2000 Pocket"]); Plaintiff was not made a loan, so the alleged debt does not appear in the list of what a claim includes in 31USC3701(b)(1)(A), p. 184 (2000 Pocket).
4. Refund of Exhibit A offset is sought from Defendant pursuant to 31CFR285.2(j), p. 101.
5. Defendant threatens further actions, including wage garnishment [copy of notice attached as "Exhibit B"] and "full investigation" of employment information [copy of notice attached as "Exhibit C"] that could damage Plaintiff s status with his employers, hamper his ability to provide for his dependents, and violate his rights. Plaintiff seeks issue of all appropriate

process to the extent necessary to preserve his status and rights pending conclusion of these proceedings, pursuant to 5USC705, p. 108 (1996 West Group Edition).

6. References to contact by Defendant includes contact through collection agencies used in this matter to date; paragraphs without citations (i.e., ¶6) refer to this Complaint.
7. At his California residence in late June of 1993, Plaintiff first received a demand from Defendant, for about $4,200, on an alleged defaulted student loan. Plaintiff has a witness that, on the day of receipt, he mailed notice of dispute and called the agent, advising he withdrew from enrollment at a school on the first day of class years previously without receiving the requested loan, and asking to be shown a loan was received in his name. Defendant did not contact Plaintiff again at that address, resulting in non-compliance, violation or negligent application of code, statute or regulation as shown in ¶8 & 9.
8. By lack of response described in ¶7, Defendant failed to act upon or provide the following:
   a) debt verification or documents supporting validity of the claim, as the result described by Defendant's demand, for timely written dispute;
   b) loan service inquiry response, required under 34CFR682.208(a), p. 612;
   c) relevant assignor guarantor records regulated to be retained and required for verifying the accuracy of the lender's information or permitting the Defendant to enforce any right acquired, under 34CFR 682.414(c)(2), p. 704;
   d) optional preservation beyond retention expirations of documents and records related to the claim, by assignor guarantor under 34CFR682.414(a)(2), p. 703, and by the lending institution under 34CFR 682.414(a)(4)(iii), p. 703.
   e) national credit bureaus reporting, by 34CFR 682.410(b)(5), p. 687, which affords required

opportunities for review of a claim under 410(b)(5)(vi)(G) & (H), p. 688;

f) a review of the alleged obligation, as required "at other times allowed by law" pursuant to 31USC 3711(e)2, p. 191 (2000 Pocket); and

g) as the responsible official, identification and required referral of a claim indicated to be false or fraudulent, in response to receipt of facts material to the right of action, indicated by procedures of 31 USC3731 (b)(2), p. 77 (2000 Pocket).

9. By lack of response described in ¶7, Defendant failed to appear to consider the following:

a) if subject claim assignment was accepted with waiver of required documents under 34CFR 682.409(c)(6), p. 734; then whether investigation would indicate redetermination of impairment decided under 34CFR682.409(d), p. 734;

b) whether investigation of eligibility for guarantee under 34CFR682.503(a)(2), p. 718, should result if guarantee/continuance of subject claim relied on lender's implied representation of eligibility fulfillment, by 34CFR682.504(b), p. 719

c) if alleged disbursement preceded required approval, 34CFR682.504(a), p. 719;

d) 34CFR682.609, pp. 734-5, requires addressing improperly received/retained funds;

e) if proper disbursal was made for assignment by 34CFR682.401 (b)(17), p. 649;

f) if all holders complied, as under 34CFR682.504(b), p. 719, if guarantor ensured all participants complied, 34CFR682.401(b)(19)(ii), pp. 649-50, or if claim approval should have resulted in deducting the entire amount, under 34CFR682.513, p. 724; g) if due diligence or timely filing violations caused cessation of insurance and loss of right to claim alleged loan under 34CFR682, Appendix C, "Timely Filing," p.802.

10. Defendant's second demand was sent to Plaintiff in Colorado on 1/20/96, for $5,417.30:

a) The tremendous gap following dispute of the first demand (see ¶7) by Plaintiff, whose address did not change for seventeen months, gave the appearance that the record was corrected, then that delay was to allow the claim total to increase 30%.

b) Plaintiff timely replied by written dispute on a copy of the demand, noting this with the original in his file, as he usually does for personal-to-business correspondence to ensure response is not separated from the issue it regards. Again, in apparent bad faith, Defendant did not respond or address the issues listed in ¶8 & 9.

11. Defendant sent demands for $5,475.71 and $5,477.16, dated 4/9/96 and 4/12/96. Not noticing it was a different agent, Plaintiff timely advised that he awaited verification for "your first notice." Defendant did not respond, again failing as indicated in ¶8 & 9.
12. Defendant demanded $5,529, dated 6/21/96, and did not respond to Plaintiff's timely written dispute asking for evidence of loan execution as "the original amount was not received;" again omitting actions and considerations listed in ¶8 & 9.
13. Dated 7/4/96, Defendant's demand for $5,538.50 included a blank financial statement form. The day he received this, Plaintiff phoned the agent, restated (see ¶7) that years ago he withdrew from a school on the first day of class without receiving the loan he applied for, and demanded a document showing receipt of a loan in his name, or that he be left alone. Defendant did not send evidence that the requested loan had been received, see ¶14.
14. By 7/16/96, Defendant sent a demand for $5,556.04, enclosing a half-legible copy of the promissory note used to apply for the loan Plaintiff had acknowledged requesting, but had disputed receiving (see 7 & 10b-13). [That copy from Defendant supplied with original Complaint to this Court, with second generation copies to other recipients, attached as "Exhibit D."

Where context indicates, references to Exhibit D mean the signed original.]

a) Plaintiff understood his obligation to pay was only to be generated if and when the lender made the forecast loan to him, personally, "... to the extent it is advanced to me..." per Exhibit D; the note itself does not demonstrate its own full execution.

b) The only legible text on the back of the note (Exhibit D, p. 2), shows assignment by the California guarantor on October 30, 1992. This assignment called for notice to Plaintiff within 45 days, under 34CFR682p.208(e), pp. 612-613; but Plaintiff received first notice of any loan alleged against him in June of 1993 (see ¶7 above).

15. Upon receiving Exhibit D, Plaintiff wrote Defendant that he never received disbursement, withdrew prior to any disbursal, was not advised of any loan activity (i.e., payment booklet, default notice), that added charges seemed usurious and he would keep all demands received. Defendant sent a second copy of Exhibit D on 8/12/96, and this was not responsive to the content of Plaintiff's disputes (see ¶7-15).

16. On 8/14/96, Plaintiff wrote that no money was advanced for the promissory note "you sent copy of—no loan was made;" and waited for a direct response through the next 4 months of Defendant's form-letter demands for $5,569.16; $5,575.72; $5,578.65; $5,590.36, with a third and final copy of Exhibit D; $5,591.06, $5,609.31 and $5,610.77. Defendant did not respond directly, or address the issues of ¶8, 9 and 14a & b.

17. Plaintiff attempted dispute to Defendant's demand, dated 12/26/96, for $5,665.52, by writing: "1. promissory note not executed—loan monies never received, 2. have advised DCS [agent] of #1 before, 3. please correct records, or ask your source to, 4. further (harrassment[sic]) letters from DCS will be returned unopened as response has had no effect." Plaintiff sent "copy to: US DOE [sic], P.O. Box 4144, Greenville, TX 75403-4144," trying to contact Defendant directly at the

return address on agents' envelopes. Defendant did not reply or address the issues of ¶8, 9 and 14a & b.

18. In January, 1997, Plaintiff called Defendant's agent, described he had not received the alleged loan, and demanded copies of everything related to disbursement of a loan in his name. On 1/29/97, Defendant sent a demand for $5,701.34 with a "history according to our records," showing Defendant's setting up the account effective 6/14/93. This was non-responsive to Plaintiff's telephone request, and ignored the issues of ¶8, 9 and 14a & b.
19. In early February, 1997, Plaintiff wrote that the "history" showed an account effective years after his signing Exhibit D, which was not executed. He advised the loan was not received, asked that records be updated and all parties be advised, referenced earlier dispute, and asked that collections cease and desist. Defendant did not contact Plaintiff within the next 6 months (see also ¶10a), ignoring the issues of ¶8, 9 and 14a & b.
20. Defendant sent a demand, dated 8/8/97, for copies of Plaintiff's recent IRS Form 1040, W2's and 1099s within 10 days. Plaintiff sent a copy of his reply (keeping a copy of the draft, with errors, only): to Defendant's agent, to the Texas address (see ¶17 above) and to the Chief, Atlanta Services Center. Plaintiff wrote he attended one class, learned the computer system was not current, submitted written withdrawal that day at the direction of the school administrator, never had contact with the school again, was not contacted about a loan until Defendant's demands, did not receive a loan; if a loan was made, it was done without his permission, and he believed the school signed his name on any authorization for receipt. Defendant responded inappropriately (see ¶21 & 22).
21. Defendant sent Notice of Proposed Treasury Offset of Federal Income Tax Refund and Other Federal Payments [copy attached as "Exhibit E"] with related

9/5/97 Debt Statement [copy attached as "Exhibit F"]. This did not meet with 34CFR30.1(b), p. 51, referenced compliance including 4CFR101.3(a), p. 105, regarding required Department of Justice authorization for administrative collection and referral upon identification of a claim with indication of fraud, false claim or misrepresentation by interested parties, as was indicated by verifiable information offered in Plaintiff's disputes (see ¶7, 12, 13 & 15-20).

a) The 22-month gap between loan- and debt-date (Exhibit F) is inconsistent with Exhibit D terms; if the alleged loan was made, first class-day withdrawal would result in a late-1985 end to the grace period. Debt dated sixteen months after that shows 34CFR682.406(a)(5), p. 679 or 34CFR 682.511(e)-(e)(1), p. 723, violations.

b) In 1983, Defendant issued bulletin L- 77 a, incorporated as 34CFR682 Appendix C; on p. 802, at the end of "Timely Filing" it states that loans for which lenders fail to comply with timely filing (¶21a) or due diligence (¶15 & 20) requirements cease to be insured; lender loses the right to receive claim payments. Lender did not cure violations for waiver of that policy under bulletin 88-G-138, appearing in CFR Title 34 as Appendix D to Part 682, pp. 807-815, upon claim for the alleged loan.

c) Plaintiff was a first-time applicant both for trade school and for a student loan. By 34CFR668.164 (f)(3), pp. 535-6, and 34CFR682.604(c)(5), p. 729, the alleged loan date should be 30 days after the first day of class (and Plaintiff's disqualifying withdrawal, see ¶7, 13, 15 & 20). By 34CFR 682.207(d)(1)-(d)(2)(B), p. 611, disbursal could be made only if Plaintiff finished the first 30 days of the course.

d) Every method of disbursal, except one, required Plaintiff's signature for receipt of funds, 34CFR 668.164(a) & (c), pp. 534-5; and, if funds were

credited directly to a school account without authorization, as permitted by 34CFR668.164(d), p. 535, lack of attendance required the loan be returned, by 34CFR682.604(d)(4), p. 730.

e) Defendant did not establish whether the record of Plaintiff's withdrawal date, by 34CFR682.414(a)(4)(ii)(E), p. 703, was before, on, or after the alleged loan date (see Exhibit F); but certification by the school to receive that disbursal could not comply with the intent of 34CFR668.167 (a)(1)(i) or 167 (a)(2)(i), both on p. 539.

22. On the Request for Review Form supplied with Exhibits E & F, Plaintiff checked selections to indicate his belief the school signed to receive loan funds (as Defendant's activities indicated a loan was received in his name) and his lack of a high school diploma/GED (as introduced in Exhibit E). The form identified these selections as ones that result in demand for additional information and, at minimum, in a review of the file.

a) Defendant then initiated an unannounced/ uninvited call to Plaintiff, in part telling him he would have to pay or prove the school owed a refund, because schools often receive the money for student loans. He replied that [Exhibit D] did not say that.

b) On 10/30/97, Defendant sent applications [copies, with cover letter, attached as "Exhibit G"] for discharge of loans made after 1/86, and requiring documentation.

c) Plaintiff did not receive the alleged loan Exhibit F dates on 6/21/85; after research and deliberating, Plaintiff responded by letter [copy attached as "Exhibit H"].

d) The Exhibit G call for documentation was dated exactly 5 years after assignment (Exhibit D, p. 2) by a guarantor required in 34CFR682.414(a)(2), pp. 703, to keep claim documents and records for five years after being paid by Defendant; and it

followed 4 years of absent or inadequate replies to Plaintiffs disputes (see ¶7-21).

23. Defendant never replied to Exhibit H, and never sent written notice of completion and outcome for the timely requested review. This contradicted the advisement on Exhibit E, *Your Rights if ED Denies Your Objections and Treasury Offsets Your Federal Payment.* Failure to send written determination also violated 34CFR30.24(e)(2), p. 54.
24. Defendant's first contact after Exhibit G was through a new agency, demanding $6,085.32 on 7/24/98. Plaintiff replied on 8/24/98, to Defendant's agent and to the Chief, Atlanta Service Center [copies attached as "Exhibit I"]. Please see ¶25-33 below regarding Defendant's response dated 11/12/98 (copy attached as "Exhibit J"].
25. In Exhibit J, Defendant disavows responsibility on the part of all Federal program participants to have timely contacted Plaintiff regarding a loan, in contradiction of:
    a) school disclosure/authorizations: 34CFR668.165, pp. 495-7;
    b) repayment information disclosure: 34CFR682.205 (c), p. 608; choice of repayment schedule: 34CFR 682.209(a)(6)(v)(A), p. 615; advisement of minimum annual payment: 34CFR682.209(c), p. 617; collections: 34CFR682.411, pp. 696-9 and 34CFR 682.507, pp. 720-1 (notably, if "a borrower does not remember the existence of an outstanding student loan," 34CFR682.507(b), p. 720); and
    c) guarantor collection activities: 410(b)(1)-(10), pp. 687-93.
26. Existence of the disputed debt is presumed in Exhibit J, without regulatory due process:
    a) Defendant never disputed (see ¶7, 10-13 & 16-19, 22a & 23 and Exhibit J) Plaintiff's not having received required consideration in exchange for his promise.

b) Existence of a loan was not established by evidence of loan execution or by claim review with notice of determination, both of which Plaintiff sought in good faith.

c) If needed, prerequisite approval for exception from the participation agreement limit to attending students of 34CFR682.503(b), p. 719, has not been demonstrated.

27. Exhibit J tries to assign responsibility for lack of contact and alleged default to Plaintiff.

a) Plaintiff's obligation to update his address with the school ended upon his withdrawal from enrollment, under 34CFR682.401(b)(5)(iv)(B), p. 646.

b) Plaintiff was not contacted regarding any loan activity, from approval/disbursal to default/assignment (see ¶7, 10-13, 15-20 and Exhibits H & I); it is unreasonable to expect he would maintain contact after withdrawing without being made a loan.

c) Had the alleged loan been made, contact responsibility is shown in ¶25 above.

28. In Exhibit J, Defendant acknowledges that, in sequence for Exhibit D, "the borrower signs before receiving a loan," but, in total disregard of the dispute to lender execution, implies that Plaintiff's agreement "according to the terms of the note" resulted in his obligation.

29. Plaintiff asserts statutory or regulatory revision is indicated if a copy of the disbursement check is not required to enforce this collection, as stated in Exhibit J. When disbursement is a single event, and there is no evidence of prior account activity upon alleging a greatly aged debt, proof the alleged disbursal was made as agreed, and identification of the receipt signature as genuine or forged, would seem vital to establishing validity and legal enforceability of the claim. The Exhibit J statement of what is *not* required, however, was inadequate to address Plaintiff's immediate and sustained disputes *of the alleged*

disbursement (see ¶7, 10-13, 15-20 and Exhibits H & I). Upon dispute, before expiration of required retention (cited in ¶22d), the guarantor should have produced (see ¶8c) *record of disbursement* from the lender, required under 34CFR682.414(a)(4)(ii)(D), p. 703.

30. The Exhibit J statements of what frequently happens —without documentation showing this to have been done for the subject claim, how it could meet the agreement of Exhibit D, or if it would reflect regulatory compliance under the actual circumstances—was an inadequate, dismissive response to the fact that Plaintiff did not receive the alleged loan.
31. In Exhibit J, Plaintiff is misquoted as believing the reason he is not responsible for the alleged debt is because the school owes a refund. Four paragraphs are devoted to details on this issue, which was not generated by Plaintiff. Defendant's apparent preference for this resolution (see also ¶22a) is provided for by 34CFR682.607(a)-(c)(1), p. 732.
32. Exhibit J refers to attendance, liability owed to the school, an enrollment contract, a published refund policy and failed payment of a refund if Plaintiff was entitled. Excluding Plaintiff's own statements related to attending and withdrawing on the first day of class, which disqualified any disbursement of the requested loan (¶21c), no documents show the existence, details, records, liability and statutory/regulatory compliance for such assertions. Pertinent records past regulated retention expiration by the time of Defendant's initial demand (¶7) or by Defendant's initial call for documents from Plaintiff (¶22b) include:

a) school records under 34CFR668.24(a), (a)(5)-(6), c(l), c(l)(iv)-(vi) & (c)(2)(iii), p. 422;
34CFR668.24(d)(3)(iv) & e(2)(i)-(ii), p. 423;
34CFR682.610(b)(4)-(6) & (c), p. 735 and
34CFR682.604(g)(4), p. 731;

b) lender records under 34CFR682.414(a)(3)(ii), p. 703, and claim attachments under 682.511(b)(1) p. 723; and

c) guarantor records under 682.414(a)(1) (a)(2) & (a)(4), pp. 702 & 703 and guarantor access to lender records under 34CFR682.414(c)(2), p. 704.

33. Without any response to two messages Plaintiff left requesting legible copies of the back of Exhibit D at the phone number provided in Exhibit J, and except for being required via 4/99 "Telegram Notification Service" notice to listen to a recorded audio claim, Plaintiff was not contacted regarding the alleged claim for a full year after Exhibit J was written.

34. From 10/29/99, for ten weeks, a new agency sent demands for $6,422.61; $6,441.60 (x2); $6,453.27; $6,463.50; $6,475.17 (x2) and $6,480.28, Plaintiff responded by letters [copies attached as "Exhibit K"]. Plaintiff's complaint to the Colorado Collection Agency Board, because this agent did not supply any proof of debt to support its collection activities on Defendant's behalf, eventually brought Plaintiff a copy of a letter, attached as "Exhibit L."

35. Defendant supplied distortions of fact and a fabricated quote for its agent to report in its defense. Exhibit K[sic] shows Defendant received a copy, with misleading content as follows:

a) Up to this agent's involvement, "each of these occasions" that brought no response whatsoever to Plaintiff's disputes are shown in ¶7, 10b-12, 16, 17, 19, 23 & 33.

b) Before and after receiving Exhibit D, Plaintiff's disputes were specifically that he did not receive a loan; the complete or full execution of the promissory note was always a question at issue, never adequately addressed by producing a copy of it.

c) Plaintiff will provide copies of his 1999 high school diploma if the Court requires.

d) Plaintiff never said he "did not sign any promissory note." It was never part of his immediate, sus-

tained disputes of existence of debt or full execution of Exhibit D. It was not reasonable to infer from his selection on the review request form (¶22) for belief the school signed his name "on the loan application, promissory note, loan check or electronic funds transfer (EFT) authorization," and single out as the only intended item, one that Plaintiff acknowledged signing (¶7-21 & Exhibit H).

e) Not to imply Exhibit L contents that are not disputed above are true, ¶35a-d should suffice to show Defendant deliberately gave misinformation to discredit Plaintiff.

36. Defendant's first contact after January, 2000, was by 8/31/00 response [copy attached as "Exhibit M"] to Plaintiff's 8/15/00 objection including that the claim was not a legally enforceable debt and that the alleged delinquency was too old for Treasury offset:

a) Inadequacy of Plaintiff's argument to prevent invalid collection based on age of the alleged delinquency did not legitimize the claim. Also, the lifting of the statute of limitations for student loans coinciding with assignment of Exhibit D—the only post-bank-stamped-received activity shown by any previous holder—suggests cause and erroneous effect for activation of a folder containing an unexecuted note.

b) The 104th Congress Public Laws, Chapter 10, Sec. 31001(b), pp. 110 STAT. 1321 358-9, statement of purpose included ensuring *quick* action to enforce recovery, use of all *appropriate* collection tools, aggressive *monitoring* of all accounts, providing all appropriate *due process rights* including the ability to verify and challenge claims and to access reasonable administrative appeals procedures. This Complaint reveals Defendant's handling of the subject claim violated, in part, the intent of the Debt Collection Improvement Act of 1996, referenced in Exhibit M.

c) The Exhibit M claim of compliance by having sent Exhibits E & F ignores that Defendant may collect only after giving an opportunity for a review within the agency of the decision of the agency related to the claim, under 31USC3716(a)(3), p. 478 (1983 West Group Edition), which Defendant did not give Plaintiff (¶23).

37. From 10/4/00 to date, Plaintiff received demands for $6,408.98; $6,416.28 (x2) and $6,665.72 from a new agency, which include Exhibits B & C. Defendant has not responded to the letter Plaintiff sent within the stated deadline of the initial demand disputing the debt and requesting proof of execution of a loan and a legible copy of Exhibit D. Defendant continues the omissions listed in ¶8 & 9 above.
38. As evidence of Defendant's lack of foundation to pursue its claim, Plaintiff submits a copy [as "Exhibit N"] of a fairly recent issue of his Equifax Credit Information Services Consumer Credit Report. Plaintiff asks this Court to preserve his privacy and protect his personal information as far as permitted under the law in all records and actions of these proceedings. Outside confirmation of the alleged debt does not appear from required reporting of default to national credit bureaus at all, either by the lender, under 34CFR682.411(e), p. 697 or by the guarantors (see ¶8e).
39. Plaintiff seeks judgment that Defendant's claim is invalid and not legally enforceable. Plaintiff asks for orders to remove the account in Plaintiff's name from offset process ; halt all collection activities; terminate the subject account; restore Plaintiff's status and reputation on records and reports generated and maintained by Defendant, including those provided by Defendant to entities outside the agency; and to issue an official, written statement from Defendant upon completion of these steps, for Plaintiff's records.
40. Plaintiff seeks damages for the false claims that followed his 1993 dispute, such as would apply if

presented in the reverse direction between the United States Government and Plaintiff, similar to liability determined under 31USC3729(a), p. 16 (2000 Pocket).

41. Plaintiff seeks reimbursement from Defendant for all financial damages to him resulting from Defendant's unjustified pursuit of subject claim for which it refused to appropriately respond to dispute. This would include the amount of offset in Exhibit A and all court and related costs incurred by the conclusion of these proceedings.

42. Plaintiff seeks judgment, sanctions and/or damages within the jurisdiction of this Court with regard to Defendant's actions, omissions and violations in dealing with Plaintiff, not to be limited by the factors of self-representation and the time constraint imposed by the imminent threat contained in Exhibit C, including, if applicable, but not limited to:

a) presenting a false claim to Plaintiff, and to Treasury, with false certification connected to enforcement of involuntary payments;

b) use of U.S. Postal Service for delivering fraudulent and/or threatening information;

c) obstruction, by misleading Plaintiff that the matter would be resolved by timely response to Defendant, thereby deflecting the proper course of action for the claim;

d) harassment since 1993, in repeated, unjustified demands and threats; demand-and-ignore tactics; and reopening the issue after unjustifiably lengthy gaps in contact;

e) failure to perform regulated responsibilities related to subject claim;

f) slander or libel provided for Exhibit L, and by involving multiple collection agencies, in deliberate ignorance of the truth and with falsity of information;

h) unjustified activities adversely affecting Plaintiff s quality of life: detracting from time, energy and focus for family by requiring production of

repeated, ignored responses to unfounded demands made as under Federal authority, and by requiring extensive research (or prohibitive costs) in unjustly forcing Plaintiff to bring suit to answer invalid involuntary payment collection; having produced discomforts as mild as trepidation upon receiving mail or an artificially high awareness of Department of Education sponsorships, and as severe as fears over job security and financial stability by unfair pursuit of a non-existent loan by a Government agency;

i) applicable violations of civil rights and/or of protection from unreasonable seizure;

j) any other violations of rules or laws the Court recognizes as present and applicable.

s/*Bruce Edwards* *1.5.01*
Bruce Edwards, Plaintiff Date
1001 Emporia Street Aurora, CO 80010-3825
(303) 341-9433 (non-pub.)

Exhibit A: (see 9/22/00 notice, p. 94 supra)

Exhibit B: 11/8/00 dunning

* * *

BRUCE EDWARDS
1001 EMPORIA ST
AURORA CO 80010-3825
SEND PAYMENT TO:
NATIONAL PAYMENT CENTER
US DEPARTMENT OF EDUCATION
PO BOX 4169 GREENVILLE TX 75403-4169

ACCOUNT NO. S* * * [SSN]
PRINCIPAL BAL. $ 2,666.94
INTEREST $ 2,466.09
PENALTY CHARGES $ .00
FEES AND COSTS $1,283.25
TOTAL BALANCE $6,412.68
AMOUNT PAID: _____

* * *

KEEP THIS PORTION FOR YOUR RECORDS

Date: November 8, 2000

The U.S. Department of Education has assigned your account to this agency for collection.

Pioneer Credit Recovery, Inc. is responsible for collecting your defaulted student debt. If you do not repay this obligation voluntarily, the federal government may use these remedies to recover your defaulted student loan(s):

* The default status of your student loan(s) may have already been reported to national credit bureaus. This adverse information may hurt your ability to obtain credit cards or loans for such things as cars, houses, etc.
* The department may refer your obligation to the U.S. Treasury department for collection by offset of any federal funds due you, including tax refunds.
* The U.S. Department of Education will charge you the cost it incurs to collect this delinquent student debt.
* You may be sued in court to compel you to repay your debt. If a judgment is rendered against you, you may be subject to liens against your real and personal property, and your obligation may be increased with such charges as attorney fees and court costs in accordance with your agreement.

Additionally, federal law authorizes the Department of Education to garnish up to 10% of the disposable pay of the defaulter, from their employer, without a court judgment and without their consent. This federal law authorizes garnishment even if state law does not otherwise permit this action. Before garnishment, the department will provide you with notice of your rights to contest this action.

Some may think that their student loan debt is too old to be enforced.

399 0053827 * * *

This is no longer true. Federal law eliminates the statute of limitations as a defense to repaying student loan debts owed to the department.

Due to the severity of these remedies, the U.S. Department of Education is willing to allow defaulters a chance to establish a satisfactory repayment schedule so

they may voluntarily retire their obligation in more lenient terms. We urge you to contact our office at:

Pioneer Credit Recovery, Inc. P.O. Box 128
Arcade, NY 14009 Toll-free: 800-492-0033
credit cards and debit cards accepted

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector.

* * *

"This collection agency is licensed by the Minnesota Department of Commerce." "North Carolina Department of Insurance permit ## 3269." "This collection agency is licensed by the Collection Service Board, State Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243." "New York City Department of Consumer Affairs license no. 0958432."

Exhibit C: 12/14/00 dunning

* * *

BRUCE EDWARDS
1001 EMPORIA ST
AURORA CO 80010-3825
SEND PAYMENT TO:NATIONAL PAYMENT CENTER
US DEPARTMENT OF EDUCATION
PO BOX 4169 GREENVILLE TX 75403-4169

ACCOUNT NO. S* * * [SSN]
PRINCIPAL BAL. $ 2,666.94
INTEREST $ 2,487.12
PENALTY CHARGES $ .00
FEES AND COSTS $1,288.51
TOTAL BALANCE $6,442.57
AMOUNT PAID: _____

* * *

Date: December 14, 2000

The U.S. Department of Education has assigned your account to this agency for collection.

Pioneer Credit Recovery, Inc. has given your situation special consideration and may be able to offer you a compromise in full settlement of your defaulted debt.

This potential compromise is subject to final approval by the U.S. Department of Education, and may result in: - a substantial savings to you; - final settlement of this outstanding debt owed; and - the prevention of further collection activity against you.

We have several repayment options available to assist you in refinancing your student loan obligation regardless of your credit rating.

Failure to respond to this letter within fifteen (15) days will leave us with no other alternative but to begin a full investigation, which will include, but is not limited to, verification of bank accounts, attachable assets and employment information.

You may avoid these procedures by contacting our office within 15 days: Pioneer Credit Recovery, Inc. P.O. Box 128 Arcade, NY 14009 Toll free: 1-800-492-0033 *Credit cards and debit cards accepted.* This is an attempt to collect a debt. Any information obtained will be used for that purpose. This communication is from a debt collector.

400 0005341 * * *

Exhibit D: (see prom. note, p. 133 supra)

Exhibit E: EDUC TOP notice

NOTICE OF PROPOSED TREASURY OFFSET OF FEDERAL INCOME TAX REFUND AND OTHER FEDERAL PAYMENTS

Your Student Loan Debt or Grant Claim

The U.S. Department of Education (ED) holds one or more past due, defaulted student loans or grant claims for which you are responsible. The Debt Statement accompanying this notice describes the debt(s) in detail. ED will refer your debt to the Department of Treasury (Treasury), unless you pay this debt in full, make satisfactory arrangements to repay it, or make a timely, valid objection to enforcement of the debt. We will request Treasury to deduct the amount of this debt, plus a servicing fee, from any Federal income tax refund and other Federal payments to which you may be entitled now

and in the future. Treasury will collect this debt by offset against Federal payments that you are now owed, but will then continue to offset the debt against Federal payments that may be owed to you in the future, until this debt is paid in full.

Important: This notice explains how to avoid offset against current and future Federal payments. Neither ED nor Treasury will provide an additional notice and opportunity to review records or to object to collection of this debt before a Treasury offset against future payments.

To pay this debt in full, send a check or money order with the top portion of the Debt Statement accompanying this notice to the address listed on the upper portion of the Debt Statement.

You have the right to -

* Review ED documents regarding the student loan(s) or grant claim(s) described in the Debt Statement.
* Object to the collection of this debt.
* Have ED review your objections.
* Enter into a repayment agreement satisfactory to ED in order to avoid collection of the debt through the Treasury Offset Program.
* Have a lawyer represent you in exercising these rights.

You must exercise these rights in accordance with ED rules:

To Request Documents

To receive documents regarding the debt(s), you must make a written request, within 20 days of the date of the Debt Statement, to the CONTACT LISTED ON THE STATEMENT. Your written request must include your Social Security Number. You must identify the debt(s) for which you want records, and include a reasonable description of the records you want to receive. Documents available may include the promissory note evidencing the loan, the loan application, records of payments made to the Department of Education, the document used by the school or lender to file a claim on the loan guarantee (in the case of a guaranteed student loan), or to assign the

loan to the government (in the case of a National Direct/ Defense Student Loan or Perkins Loan), and correspondence between you and the school or lender regarding the loan. Not all of these documents are available in every case.

Objections You May Raise to Collection of the Debt

You can object to Treasury offset on several grounds. ED will not use the Treasury Offset Program to collect all, or some part, of a student loan or grant claim to the extent that -

* The debt is not past due at this time because you have already repaid the debt, or you have made the required payments under the repayment agreement you reached with ED.
* The debt is not legally enforceable against you at this time because, for example, you have filed bankruptcy and your case is still pending in the court; the debt was discharged in a past bankruptcy; the loan was canceled for the death or disability of the borrower; or (for Perkins or NDSL loans) the loan was canceled in part for qualifying military, teaching, volunteer, or public service.
* The school owed you a refund for the period for which the loan was made, but did not pay the refund, or paid only part of the refund.
* The school you attended closed during the period for which the loan was made, or you did not have a high school diploma or GED and the school improperly determined that you could benefit from its training.

To Object in Writing to Collection of the Debt

To have ED review your objections to the collection of the debt(s), you must make a written request for review, within 65 days of the date of the Debt Statement, to the CONTACT LISTED ON THE STATEMENT. You can use the enclosed Request for Review form to state your objections. If you requested and received documents, you will have 15 days after the date the documents were mailed to request a review, even if that would take your request outside the 65 day period. You must include in

your request your name, your Social Security Number, the debt(s) about which you raise objections, a statement of the objections you have to collection of the debt(s) through Treasury offset, and copies of any documents you want ED to consider to support your objections.

To Request an In-Person or Telephone Hearing

If you want to present your objections in person or in a telephone hearing, complete the enclosed Request for Review form. If you do not use the enclosed Request for Review form, you must explain in a written request for review, the facts that you want to present in person that would show that the debt(s) is not enforceable, and why you believe that ED cannot adequately consider your objections by reviewing ED's records of the debt and any other records, including any written statement that you now provide.

If ED decides to grant an in-person or telephone hearing, you will be contacted to schedule the time and place. If ED decides not to grant an in-person or telephone hearing, ED will contact you to advise you that no in-person or telephone hearing will be held and whether ED accepts your written objections.

To Enter Into a Repayment Agreement

If you want to enter into a repayment agreement, you must write to the CONTACT LISTED ON THE DEBT STATEMENT. To avoid a Treasury offset of Federal funds to which you may be entitled, you must agree to pay the debt under terms acceptable by ED, and must actually make the first payment under the agreement within 65 days of the date of the Debt Statement. If you made a request for documents within 20 days of the date of the Debt Statement, you have 15 days from the date the documents were mailed to you to work out an installment agreement and make the first payment. If you objected to the debt within the deadlines explained in this Notice, and ED denies your objections, you will have 7 days from the date the decision is mailed to you to work out the agreement and make the first payment.

Your Rights if ED Denies Your Objections and Treasury Offsets Your Federal Payment

If you present objections to collection, ED will send you a written decision explaining whether ED will collect the debt in whole or in part, the reasons why, and the amount to be collected. If you disagree with this decision and your Federal payment is offset, you may have this decision reviewed by bringing a lawsuit in Federal district court.

If You Miss a Deadline for Exercising Your Rights

You may obtain documents, a review, or a hearing, or enter into a repayment agreement, even if you miss the deadlines in this Notice. However, if ED has already requested Treasury to offset your Federal payment, ED will not withdraw the request until you prove that the debt is not legally enforceable or not past-due. Therefore, your refund or other Federal payments may be offset if, after the deadlines here, you request a review and prove that the debt was not enforceable by offset, or you reach an agreement to repay and make the first payment.

If you later prove that the debt was not enforceable by offset, ED will return to you the amount collected that exceeded the proper amount. If you later enter into a repayment agreement and make the first payment, ED will either return the amount collected by offset after that date, or will credit the amount to your account.

Taxpayers Who File Joint Tax Returns

If you file a joint Federal income tax return, the spouse not owing the debt may be entitled to receive his or her portion of the refund by filing an IRS Form 8379, Injured Spouse Claim and Allocation. Attach Form 8379 to the back of your original income tax return and mail the forms to the IRS Service Center where you file. The IRS will not be able to process your claim until after your joint refund is taken.

Federal Employees:

* * *[end]

Exhibit F: 9/5/97 EDUC Debt Statement

* * *

KEEP THIS PORTION FOR YOUR RECORDS
U.S. DEPARTMENT OF EDUCATION

Date: September 5,1997

Debt Statement

The U.S. Department of Education (ED) holds the following defaulted student loan(s) or grant claim(s) which it intends to collect by Treasury offset against any federal refund and other federal payments you may be entitled to receive in the future. Please read the enclosed notice of proposed offset for an explanation of your rights and the manner in which you must exercise them to avoid offset. Any in-person hearing will be held in San Francisco (see enclosed notice).

ED records show the following information on these debts. See the enclosed notice for instructions on how to request additional information ED records may contain. Individual debt information is listed below and/or on the following page.

Amount repaid to lender/school/guaranty agency: $211.85
Date earliest debt transferred to ED: 04/16/87
Payments to ED (may include fees paid by debtor and payments on other debts): $.00
Current principal $2,666.94
Current accrued interest: $2,013.98
Principal and interest on debts eligible for offset, by date of Debt Statement: $4,680.92

Send any request(s) for: documents, a review of objections, or a hearing, in writing to:

Diversified Collection Service, Inc.
P.O. Box 5026 Hayward CA 94540

As explained in the notice of proposed treasury offset, you can avoid offset by making satisfactory arrangements to repay your debt(s). For information on your repayment options, call: (800)766-7617

GSL Date: 06/21/85
School: Travel and Trade Career Institute

Amount: $2,500.00
Lender: B of A Trustee c/o CMSC
N18 0022373
Note: The lender shown submitted the default claim on the FISL, FDSL or GSL, but may not be the lender that made the loan. If NDSL or POVR (grant claim), the school listed made the loan or grant. The school is the most recent one you attended. If no school is named, request documents from the contact listed on the previous page.
N18 0022373

Exhibit G: (see 10/30/97 letter, p. 14 supra)

Exhibit H: 2/21/98 reply to Hearings Branch

Bruce Edwards
1001 Emporia St.
Aurora, CO 80010-3825

February 21, 1998

Reduced to 10 pt type on one page and mailed via US Post 2/22/98

Ms. Shirley L. Amey,
Sr. Loan Analyst
Hearings Branch
U.S. DOE, Postsecondary Education Office
50 United Nations Plaza Region IX
San Francisco, CA 94102-4987

Subject: SSN: [* * * SSN] DEBT # G199309030022801

Dear Ms. Amey,

This is a response to the applications sent to me by your office at my request. Upon review I see that I do not fit in either category, as I have neither evidence of forgery nor training from which I could not benefit due to the fact that I had nothing to do with Travel And Trade Career Institute after the first class.

At the first class, prior to the transfer of any funds to myself or to the school, I determined that the system the school was using was outdated. I talked to the administrator in his office to inform him that, for that reason, I

would no longer be attending this school (I do not remember his name). He told me all I needed was to submit my withdrawal in writing, which I did before leaving his office.

I never had contact with this school again. I never received any documents concerning a loan until CSC Credit, then Diversified Collection, contacted me in 1993. I responded promptly that no loan had been executed. I believed that to be the end of the matter. I didn't save copies of this exchange.

The next time I was contacted regarding this matter was in 1/96, at which time I followed the course outlined to dispute the validity of any debt in a timely manner. I received as evidence only a copy of my original promissory note on requesting a loan. I stated then, as I state now, that I never received a loan, never authorized loan transers nor used any funds to pay a tuition debt, which had not been incurred, to the school in question.

I maintained my rebuttals through the next 22 months. I received no response except seemingly automated demands for payment until I tried selecting from among the options presented to me for avoiding seizure of income tax refunds, which brought me your letter and enclosures. I did keep copies of everything but that selection.

Having examined the promissory note, I do confirm the signature on it is mine; but I cannot say what is on other documents, if any, pertaining to a loan executed against it.

I have put a lot of though into what the appropriate response might be, and believe that to submit an application at this point might initiate a loan where there was none, in view of what's happened based solely on a promissory note.

If you have any questions or require a more formal sworn statement, I will respond to your next communication in a much more timely manner.

Sincerely,

Exhibit I: 8/24/98 replies (2) to dunning

Bruce Edwards
1001 Emporia St.
Aurora, Co 80010-3825
SSN# [SSN]

August 24, 1998

OSI/A.M. Miller & Associates, Inc.
P.O. Box 216
Minneapolis, MN 55440-0216

In response to your notice dated July 24 and letter dated August 13 of this year, I have disputed the validity of this debt with each agency that has sent me notice of same.

Having received a copy of the promissory note offered as proof of a debt, I maintain that this proves only that I requested a loan, which I do not dispute. However, the execution of such a loan was not completed, and the circumstances are as stated below.

After applying for a loan, I attended only the first class offered by the Travel And Trade Career Institute, where I found the reservation system used by the school was outdated. After that class, I talked to the administrator, whose name I do not recall, in his office to inform him that I was withdrawing and would not be attending this school as it would not give me competitive skills in that industry. He told me all I needed to do was to submit my withdrawal in writing, which I did before leaving his office that day.

I never had contact with this school again. I never received any documents concerning a loan until CSC Credit, then Diversified Collection, contacted me in 1993. I responded promptly that no loan had been executed. I believed that to be the end of the matter. I didn't save copies of this exchange.

The next time I was contacted regarding this matter was in 1/96, at which time I followed the course outlined to dispute the validity of any debt in a timely manner. I

received as evidence only a copy of my original promissory note on requesting a loan. I stated then, as I state now, that I never received a loan, never authorized loan transfers nor endorsed any funds for tuition debt, which had not be incurred, to the school in question or any other entity.

While maintaining my rebuttals to date, I have received no response except seemingly automated demands for payment until I tried selecting from among the options presented to me for avoiding seizure of my income tax refunds, which brought me a response from Shirley L. Amey, Sr. Loan Analyst, Hearings Branch, US DOE Postsecondary Ed. Ofc.

I confirmed my signature on the promissory note, but advised I had no knowledge of any activity pertaining to a loan executed against it. I have not received a response from the Hearing Branch, but find myself apparently back in the loop of automated demands by yet another collection agency-yours.

My answer to these demands has always been, and will continue to be, that no loan was received against my promissory note, and therefore no payment is due or owing. Please forward this information to the Department of Education for the final disposition of this erroneous account.

Bruce Edwards

Bruce Edwards
1001 Emporia St. Aurora,
Co 80010-3825 SSN# [SSN]

August 24, 1998

U. S. Department of Education
Atlanta Service Center -Chief
Contract Services Branch
Attn. Chief,

I, Bruce Edwards, am lodging a formal complaint about unfair collection practices. I have responded to CSC Credit, Diversified Collection, Ms. Amey (Sr. Loan

Analyst for D.O.E. in San Francisco) and, now from a notice I just received I will have to respond to OSI/A.M. Miller & Associates, Inc. In all my responses I have disputed the validity of this debt and am doing so again in this complaint.

I have stated in those responses, as I adamantly state now, that I never received a loan, never authorized loan transfers nor used any funds to pay a tuition debt to Travel and Trade Career Institute. With each entity I have requested validity of this debt and only received a promissory note as proof. When I request other proof I am passed off to another collection agency. Finally I hoped by dealing with Ms. Amey that I would, at least, get a response and not further requests from a different agency.

I feel that any more attempts to collect a debt that does not exist is unfair and that I should be removed from any lists for unpaid debts. This dispute has gone on long enough and I hope you can resolve this issue for me. Please respond in writing to the resolution of this issue.

Exhibit J: 11/12/98 Debt Collection Svc. reply

United States Department of Education
Office of Postsecondary Education
Student Financial Assistance Programs
600 Independence Ave. SW, Washington DC 20202

November 12, 1998

Mr. Bruce Edwards
1001 Emporia Street
Aurora, Colorado 80010-3825

Debt No.: G199309030022801 Account No.: [* * * SSN]

Dear Mr. Edwards

Thank you for your correspondence concerning your student loan account.

You state that you were not contacted regarding this debt for a number of years. Neither the U.S. Department of Education (ED) nor any previous holder of a loan can

bear any responsibility if a borrower does not remember the existence of an outstanding student loan. The word "loan" is clearly marked on each promissory note. It is the borrower's responsibility to maintain contact with the holder of each loan and take all actions necessary to ensure that a loan does not enter into default.

The promissory note the borrower signs before receiving a loan explains the terms of the loan and outlines his or her rights and responsibilities as a borrower. The promissory note is a binding legal document--when the borrower signs it, he or she is agreeing to repay the loan according to the terms of the note.

You should note that ED is not required to provide copies of cancelled disbursement checks to enforce collection of this debt.

You state that you did not receive the funds from your student loan. The funds from student loans are frequently applied by schools to enrollment expenses, such as tuition, fees, and other school charges. Students frequently do not directly receive the funds.

You believe that you should not be held responsible for repaying this debt because the school you attended should have issued a refund. Upon enrollment in the school, you agreed to pay tuition and fees owed to the school as a result of that enrollment. Because you attended the school, you became liable for tuition and fees owed to the school as set forth in the enrollment contract. If a refund was due, it should have been made in accordance with the school's published refund policy.

In addition, if other financial aid was awarded at the time of enrollment, a portion of any refund due may have been applied to that aid.

If you believe that the school failed to pay the lender a refund to which you were entitled, you must provide evidence. Acceptable evidence may include a statement on school letterhead showing that a refund was due. This statement must also indicate that the refund was to be applied to the loan currently held by ED. This evidence should be sent to:

U.S. Department of Education
San Francisco Service Center
P.O. Box 420410
San Francisco, California 94142-0410

If you cannot provide evidence that a refund is due, you must make arrangements to repay this debt.

For further information, you should contact OSI/A.M. Miller & Associates, Inc., the agency currently administering this account, at 1-800/735-9592.

I hope this information will be helpful to you. If I can be of further assistance, please let me know.

Sincerely,

s/*Diane Spadoni*
Diane Spadoni
Regional Director
Debt Collection Service

Left msg. asking for legible copy of back page of promissory note. 1/4/99

Exhibit K: 11/99-1/00 replies (6) to dunning

November 11,1999

Van RU Credit Corporation
P.O. Box 1027
Skokie, IL 60076-8027

RE: SSN [SSN], Dispute of Validity of Debt

To Whom It May Concern:

Per the notice to me dated October 29, 1999, and within 30 days after its receipt, I am hereby disputing the validity of this debt in writing.

Any verification of debt should include a clear and legible copy of all paragraphs on the back side of the promissory note as well as any proof of actual disbursement of the loan, neither of which I have been given.

According to the terms shown on the front side of the promissory note, my promise to pay the loan amount was described as being "to the extent it is advanced to me..." (paragraph I) and interest as being "from the date you [the lender] advance the loan..." (paragraph III).

The loan amount promised at a future date by the promissory note was never advanced to me, nor did I ever authorize it to be paid to an other party. I did not attend the school referenced, but formally withdrew from enrollment before the end of the first class session. This occurred prior to the estimated date of disbursement for the loan and I had no further contact with either the school or the proposed lender.

I maintain, and have since the first collection notice, that no money was received by me, or by anyone else with my authorization, against a loan as described on this promissory note. I object to the fact that I was first approached about this matter in 1993, eight years after the note was dated, and without evidence of a loan execution. At best, the delay left me unable to produce personal or financial records from 1985 regarding a course of study which I did not attend and a loan that was not executed. I further object to the fact that my responses to the numerous unfounded collection attempts over the past six years have met with repetitious automated demands for payment, with the Department of Education and collection agencies it has employed insisting that the existence of the promissory note is in itself proof of my obligation. It is not, because I only promised to repay any loan to the extent it was advanced to me, and that was never done.

Whether in this millennia or the next, I look forward to acknowledgment that this account has been held open in err and to the permanent cessation of attempts at collection.

Sincerely,
Bruce Edwards
1001 Emporia Street
Aurora, CO 80010-3825

December 10, 1999

Van RU Credit Corporation
P.O. Box 1027 Skokie, IL 60076-8027
RE: SSN [SSN], Dispute of Validity of Debt

To Whom It May Concern:

Both dated 11/24/99, your demand for payment and your offer of assistance if I place a telephone call to Van RU Credit Corporation to resolve my concerns, are unresponsive and do not show your obtaining verification of the debt in answer to my dispute of its validity as described in your initial contact.

As stated in that dispute mailed within thirty days of your original demand, any verification of debt should include a clear and legible copy of all paragraphs on the back side of the promissory note as well as any proof of actual disbursement of a loan received by me or on my authorization, neither of which I have ever received. In absence of proof of actual loan disbursement, the Department of Education and its collection agencies are unjustly alleging a principal balance, interest, fees and costs against my promise to repay a proposed future loan without showing I received it.

According to the terms shown on the front side of the copy of a promissory note I received from a previous collection agency, my promise to pay the loan amount was described as being "to the extent it is advanced to me..." (paragraph I) and interest as being "from the date you [the lender] advance the loan..." (paragraph III). The extent of advancement of money to me is zero, and no date has been established as that on which the prospective lender advanced a loan to me.

As I have repeatedly stated in response to collection attempts over the past six years, I did not attend the school referenced, but formally withdrew from enrollment before the end of the first day of class session and prior to the estimated date of disbursement for the loan over eleven years ago. I had no further contact with either the school or the proposed lender, from whom the Department of Education apparently assumed an account with my identifiers without verification that an actual loan had been executed.

This account has been held open in err and the Department of Education can consider this as my

standing reply to all future attempts to collect either directly or through any collection agencies it uses. Further, I will not discuss a loan that was never disbursed with a collection agency employee. I will request documented proof of receipt of a loan in response to future written demands by any entity for payment on this account.

Sincerely,
Bruce Edwards
1001 Emporia Street
Aurora, CO 80010-3825

December 17, 1999

Van RU Credit Corporation
P.O. Box 1027 Skokie, IL 60076-8027

RE: Department of Education Acct. #S[SSN], Ability to Pay & Validity of Debt

I have never cited an inability to pay as a reason for my refusal to do so in this matter. Therefore, there is no foundation in fact for you to make inquiries which, by their very nature, call into question my reputation with entities upon whom I depend for my financial references and for my livelihood; as you wrote you will "to determine" my "ability to pay" in your form letter of December 10. Such an investigation would imply that I have demonstrated an unwillingness or inability to repay an existing legal debt.

I am willing and able to arrange the repayment of any and all obligations I have actually incurred. However, the charges listed on this account are not the result of my having received a loan, but of my promise to repay a future loan, to the extent it was advanced to me, plus interest. The proposed loan was never executed and no money was disbursed to me or by my authorization.

Your own files will reflect that Van Ru Credit Corporation's most recent correspondence also grossly misinterprets my prompt and thorough responses to your three previous contacts as having "ignored all previous

notices." Your files will further show that you have not mailed me a copy of verification upon my written dispute of its validity within 30 days after receipt of your first notice dated 10/29/99.

Placing me on notice that you will "investigate" my "financial situation through credit reporting agencies, employers," et al, is an unfounded and inappropriate action to attempt collection against an account for which you cannot provide actual verification of debt. Such action would be an unnecessary, inappropriate and malicious maneuver to cause me suffering for maintaining that no loan was executed. No effect on my response to your collection process has been, or can be shown to have been, a result of my financial standing.

I will be forwarding copies of my complete correspondence with Van Ru Credit Corp. to both the federal and the state agencies you provided, with requests that they take whatever action is appropriate in view of your misrepresentations, both actually to me and as threatened to others about me. While there is no further reason for you to maintain this account as active, because collection must necessarily be subject to the establishment of the existence of a debt, I ask that you forward copies of our correspondence for the permanent file when returning this account to your employer.

Bruce Edwards
1001 Emporia Street
Aurora, CO 80010

December 18, 1999

U.S. Department of Education
Atlanta Service Center-Chief, Contract Services Branch
Atlanta Federal Center Tower
61 Forsyth Street, SW, Room 19T89 Atlanta, GA 30303

RE: Van RU Credit Corporation, P.O. Box 1027, Skokie, IL 60076-8027 in the matter of Department of Education Acct. #S[* * * SSN]

This is to lodge a formal complaint of unfair collection practices against the above mentioned.

I am enclosing copies of the entire exchange between this organization and myself. Please note their most recent letter misrepresents my responses to them currently, and to the U.S. Department of Education over the past six years.

Worse, and the reason for this complaint, is that, without having responded to my stated right to proof Van Ru Credit Corporation possesses verification of debt, they have put me on notice that they will begin an investigation into my ability to pay. This, then, is a threat to damage my financial and professional reputation, by the implications of such an investigation to the entities they propose, in order to extort payment to them in absence of due process.

Furthermore, the U.S. Department of Education has used multiple collection agencies since 1993 to allege a debt and justify having accepted a 1992 assignment of an account in my name based on a promissory note for a proposed loan dated in 1985. If the law provides a loan must be established prior to initiating a collection process, please also examine the DOE's continued harassment of me. It is based on a promissory note against which money was not disbursed at any time, and the DOE cannot offer proof to contradict my assertions that this is the case.

Thank you,
Bruce Edwards
1001 Emporia Street
Aurora, CO 80010

January 21, 2000

Van RU Credit Corporation
P.O. Box 1027 Skokie, IL 60076-8027

RE: Department of Education Acct. #S[SSN], Involuntary Remedy & Settlement via Telephone

I received your form letter regarding involuntary remedy dated 12.24.99 and posted 1.11.00. You note such

remedies are "as permitted by law," and I maintain that it is not within the law to attempt to collect an amount as a debt where no debt exists. I note, also, that you have never supplied the proof of debt you offered in your first contact and which I have requested by several letters.

I received two identical letters, both dated 1.9.00 and posted 1.13.00, in which you state you understand the concerns I raise and tell me I must contact one of your trained specialists at the telephone number provided to "resolve this federal debt."

I will respond to any assistance offered in writing, but find activity on this account to date proves it necessary to have all exchanges in writing, rather than verbally. Even so, I have found for the past six years that the Department of Education and its collection agencies are unresponsive and consistently disregard the particulars of this issue.

I have stated in previous letters that the promissory note, which a previous agency copied the face to me, is unexecuted to my knowledge or consent. My signature on the promissory note obliged me to repay principal and interest *to the extent advanced to me,* which, in this case, is zero. The loan was not made on the projected disbursement date, and no obligation is proven by my signature on a document promising to repay, if extended, a loan that was never made.

I hope you understand, but whether or not you do, I prefer to keep all correspondence in a form that I can retain for my permanent records. If involuntary "remedy" is initiated, I hereby request that any rights I have under those laws be preserved; including submission of my responses to the same authority concurrent with the instigation, and copies to me showing the applicable citations of law.

Bruce Edwards
1001 Emporia Street
Aurora, CO 80010

January 28, 2000

Van RU Credit Corporation
as agent for the US DOE
P.O. Box 1027
Skokie,1L 60076-8027

RE: Department of Education Acct. #S[SSN], Repayment Options Form Letter

I received your form letter, regarding my need to participate in one of a limited list of repayment options to clear my account, dated 1.16.00 and posted 1.24.00. The options offered do not include the only appropriate one in this case, which is to clear the account based upon correction of the principal balance to zero.

I am requesting, as I have done in all my responses to you, that Van RU Credit Corporation supply the proof of debt offered in its first contact, upon which it is basing its correspondence to me. This cannot be simply documentation of my having promised to repay a future loan, if extended, contained in a promissory note that the lender never executed.

As promised in my letter dated and sent January 21, this is my response to assistance offered in writing. The choices contained in your offer, however, do not include one applicable to the facts and existing circumstances of this account.

I continue to find the activity on this account proves it necessary to have all exchanges in writing, rather than verbally. I would prefer, however, to be able to respond to correspondence generated on the basis of the specific circumstances and details of the account attributed to my name, rather than to unsubstantiated, generic demands for payment.

Bruce Edwards
1001 Emporia Street
Aurora, CO 80010

Exhibit L: 1/13/00 letter to Colo. Atty. Gen.

{VAN RU Credit Corp}

VAN RU CREDIT CORPORATION
POST OFFICE BOX 1027
SKOKIE, IL 60076-8027

{Received JAN 18 2000
OFFICE OF THE ATTORNEY GENERAL}

January 13, 2000

Denise A. Chelius
State of Colorado Department of Law
1525 Shennan Street 5th Floor
Denver, Co. 80203

RE: Bruce Edwards, SSN [SSN]

Dear Ms. Chelius:

Upon receipt of your inquiry to our office an immediate investigation was conducted ensuring a quick response. Enclosed for review are the documents requested per your inquiry.

Prior to assignment to Van Ru Credit Corporation, Mr. Edwards on numerous occasions disputed the validity of his debt. Mr. Edwards on each of these occasions was provided with a copy of the fully enforceable document commonly known as the promissory note. At no time did Mr. Edwards provide supporting documentation validating his dispute, only letters with general statements of dispute.

The U.S. Department of Education received from Mr. Edwards in October of 1997 a request for a Treasury Offset Review. In the review, Mr. Edwards stated he did not have a high school diploma and that he did not sign any promissory note. Mr. Edwards was sent two applications; ability to benefit and unauthorized signature. Six months later April 1999, the U.S. Department of Education received from Mr. Edwards a letter stating that he does not fit any of these categories of ability to benefit or unauthorized signature. This letter contradicts Mr. Edwards's[sic] own statement that he did not have a

high school diploma and that he did not sign a promissory note.

In November of 1998 Mr. Edwards spoke with the Public Inquiry Contractor for the U.S. Department of Education. Mr. Edwards at this time stated that he did in fact sign a promissory note and dropped out of school after 1 class. Mr. Edwards' was asked to send proof disputing the promissory note that has been provided for him on previous request. No proof ever received as requested. Another copy of the promissory note has been requested and will be sent to Mr. Edwards upon receipt.

Please contact me directly if for any additional information is needed.

Sincerely,

s/T. Ruzicka
Todd Ruzicka
Director of Quality Control
1-888-337-8331 ext. 6674

Cc: Mary Patterson, U.S. Department of Education, ASC.
Enclosure EXHIBIT A

Exhibit M: 8/31/00 Debt Collection Svc. reply

United States Department of Education
The Office of Student Financial Assistance
WASHINGTON, D.C. 20202-____

August 31, 2000

Mr. Bruce Edwards
1001 Emporia Street
Aurora, Colorado 80010

Debt No.: G199309030022801
Account No.: [***SSN***]

Dear Mr. Edwards:

Thank you for your recent letter regarding your student loan account.

You believe that your debt is no longer enforceable due to the statute of limitations. The Higher Education Act of 1965, 20 U.S.C. 1091a(a), as amended by the

Higher Education Technical Amendments of 1991, P.L. 102-26, and the Higher Education Amendments of 1992, P.L. 102-325, eliminated the statute of limitations for student loan collections.

You object to the offset of your federal payments in partial repayment of this debt. Administrative offset is authorized by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996. Any account with the U.S. Department of Education (ED) that has a balance and is not in repayment is eligible for referral to the U.S. Department of the Treasury's Financial Management Service for offset.

According to 31 U.S.C. 3716, ED is required to send the borrower a notice prior to offset. A notice was sent to your address of record on September 5, 1997. This notice stated in part that if we did not receive payments, we would refer your account for offset on or about December 30, 1997. Your account will be removed from the offset process when this debt is satisfied.

If you have further questions, you should contact the Debt Collection Service Center at: 1-800/621-3115.

I hope this information will be helpful to you. If I can be of further assistance, please let me know.

Sincerely,

s/*Diane Spadoni*
Diane Spadoni
Regional Director
Chicago Service Center

Exhibit N: 6/20/00 Edwards' Equifax report

[EQUIFAX] Please address all future correspondence to:
Equifax Credit Information Services
P. O. Box 105518 Atlanta, GA 30348
1 (800) 882-0648

CREDIT FILE Confirmation Number: 015219548

When calling for assistance, please
have a copy of this file for reference. June 20, 2000

Personal Identification Information

Bruce Edwards 1001 Emporia St Aurora, CO 80010
Social Security #: [SSN] Age: 35

Previous Address(es):

516 Nebraska B, Long Beach, CA 90802

Last Reported Employment: TAXI Systems Incorp

File blocked for promotional purposes

Collection Agency Account Information

C.B. Accounts, Inc. (309) 671-0525
Collection Reported 02/98
Assigned 05/95 to C.B. Accounts, Inc. (309) 671-0525
Client -GTE Inc CA; Amount -$74
Unpaid; Balance -$74 Date of Last Activity 12/94
Individual Account; Account Number [* * *]

Credit Account Information

(For your security, the last 4 digits of your account numbers have been replaced by*)

Company Name Account Number Whose Acct Date Opened Months Reviewed [a] *Date of Last Activity;* [b] *High Credit;* [c] *Terms; Items as of Date Reported:* [d] *Balance,* [e] *Past Due,* [f] *Status;* [g] *Date Reported*

Citicorp 427138210703* I 07/96 43
[a] 04/00; [b] _; [c] _; [d] $4809, [e] _, [f] R1; [g] 04/00

Crs Site Coordinat 1900000BY0402* I 12/95 43
[a] 06/99; [b] _; [c] 152; [d] $304, [e] _, [f] 01; [g] 06/00
CHILD/FAMILY SUPPORT OBLIGATION

FDR-DCBT/ACCC 600897171300* I 06/95 47
[a] 11/97; [b] $500; [c] _; [d] $0, [e] _, [f] R1; [g] 06/00
ACCOUNT CLOSED BY CONSUMER_CHARGE

Montgomery Ward CP3P1460-885* I 01/95 37
[a] 09/96; [b] $710; [c] _; [d] $0, [e] _, [f] R1; [g] 02/98
ACCOUNT CLOSED BY CONSUMER_PAID ACCOUNT/ZERO BALANCE

PEP Boys 600920000172* I 07/95 48
[a] 12/97; [b] $500; [c] _; [d] $0, [e] _, [f] R1; [g] 06/00
ACCOUNT CLOSED BY CONSUMER_CHARGE

Wachovia Bankcard 543555141144* I 08/98 20
[a] 03/00; [b] $3500; [c] _; [d] $0, [e] _, [f] R1; [g] 06/00
CREDIT CARD_ACCOUNT CLOSED BY CONSUMER

Companies that Requested your Credit File:

06/20/00 Equifax Update

05/04/00 Equifax – Disclosure

03/31/00 AR-Fingerhut National Bank

11/04/99 Van RU Credit Corp

07/29/99 DTC-CB&I CB&I/FAL

06/20/99 AM-Gitibank – VISA

05/31/00 Equifax - Disclosure ACIS 015219548

04/10/00 AR-Equifax-Colorado NL

03/23/00 AR-Wachovia Bank Card Service

10/21/99 AR-Fingerhut National Bank

07/04/99 AR-Gitibank – VISA

10/10/98 Equifax – Disclosure

End of Credit File Page 1 of 1

*000819-2 OF2 * 015219548-Y36-000191129-9920 - *CNTVC* S

NOTE: "Whose Acct: 1" = Individual type of participation. "Status: R = Revolving (payment amount varies) type of acount. O = Open (entire balance due each month) " " " 1 = Paid as agreed."

#2 Affidavit of Service 1/16/01

United States District Court For the District of Colorado

{Filed United States District Court Denver, Colorado B
JAN 16 2001 James R. Manspeaker s/L}

Civil Action File No. **01-B-0036**

Bruce Edwards
1001 Emporia Street Aurora, CO 80010-3825
PLAINTIFF

v.

United States, Department of Education
Deputy/General Counsel
400 Maryland Avenue, S.W Washington, DC 20202
DEFENDANT

AFFIDAVIT OF SERVICE

To the Clerk of the District Court:

I hereby certify that copies of the Summons; the Complaint; Instructions Regarding Notice of Availability of a United States Magistrate Judge to Exercise Jurisdiction Pursuant to 28 U.S.C. 636 (c), Fed R. Civ. P. 73, and D.C. COLO. LR 726; captioned Notice of Availability of a United States Magistrate Judge to Exercise Jurisdiction; captioned Order of Reference, and this Affidavit of Service were mailed to Counsel for Defendant at the address recorded as Defendant above; and that copies of the Complaint, Summons and Affidavit of Service were mailed to the United States Attorney General and to the United States Attorney, District of Colorado, as recorded below:

United States Attorney General
Room 5111, Main Justice Bldg.
10th and Constitution, N. W. Washington, DC 20530

United States Attorney District of Colorado
1961 Stout Street, 11 th Floor Denver, CO 80294

On: *1.12.01*
Date mailed, certified/return receipt requested
By: s/*BruceEdwards*
Bruce Edwards, PLAINTIFF

NOTE: This affidavit is submitted pursuant to Rule 4(1) of the Federal Rules of Civil Procedure

#3 Answer 3/19/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado B
2001 MAR 19 PM 3:34 James R. Manspeaker Clerk by s/? Dep. Clk.}

Civil Number: 01-B-0036
BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

DEFENDANT U.S. DEPARTMENT OF EDUCATION'S ANSWER TO PLAINTIFFS' COMPLAINT

COMES NOW defendant, United States of America, Department of Education, through its undersigned counsel and hereby answers Plaintiff's Complaint according to each paragraph thereof.

1. Defendant denies all allegations in Paragraph 1.
2. Defendant admits jurisdiction only for judicial review under the Administrative Procedure Act; and denies all remaining allegations in paragraph 2.
3. Defendant denies all allegations of Paragraph 3.
4. Paragraph 4 is a prayer for relief to which no response is required. To the extent a response is deemed necessary, Defendant denies this paragraph.
5. Defendant admits that it notified Plaintiff of potential administrative wage garnishment and other collection methods but denies the remaining allegations in paragraph.
6. Paragraph 6 does not require a response. To the extent a response is deemed necessary, Defendant denies this paragraph.
7. Defendant denies as to the date upon which Plaintiff received a collection letter; Defendant's records indicate that the first demand letter sent to Plaintiff, that was not returned as undeliverable, was sent out on August 18, 1993. Defendant denies all remaining statements of paragraph 7.

8. Defendant denies receipt of Plaintiff's alleged letter and thus denies all of paragraph 8.
9. Defendant denies receipt of Plaintiff's alleged letter and thus denies all of paragraph 9.
10. Defendant denies as to the date of the second demand; Defendant's records show that demand letters were sent to Plaintiff's California address in 1993, 1994 and 1995.
    (a) Defendant denies all statements in paragraph 10(a).
    (b) Defendant denies all statement in paragraph 10(b); Defendant's records show that Defendant's collection agency received a letter from Plaintiff on June 25, 1996 wherein Plaintiff sought copies of his promissory notes.
11. Defendant admits that demands for payment were sent on April 9, 1996 and April 12, 1996; deny that Defendant failed to respond to his request. Defendant's records indicate that the collection agency sent the promissory notes to Plaintiff on July 11, 1996 and again on August 28, 1996.
12. Defendant admits that a demand letter was sent on June 21, 1996; deny remaining statements in paragraph 12.
13. Defendant admits that Defendant sent demand letter on July 2, 1996; deny remaining statements in paragraph. Defendant's records do not indicate that Plaintiff called the collection agency in July or August 1996. Defendant's records indicate that Defendant received documents from Plaintiff on July 12, 1996.
14. Defendant admits Defendant sent Plaintiff a copy of his Promissory Note on July 11, 1996 and admit that second page is difficult to read.
    (a) Deny statements in paragraph 14(a).
    (b) Defendant admits that the legible portion of page 2 of the promissory note is the assignment of the loan from the lender to the guaranty agency. Deny that Plaintiff did not receive notice from the

guaranty agency; records from the California Student Aid Commission indicate that notices and demands for payment were sent to Plaintiff as early as February 26, 1987.

15. Defendant admits that Defendant sent promissory notes to Plaintiff again on August 28, 1996. Admit that Plaintiff sent letters to Defendant denying loan but said letter was not sent until October 1997 and September 1998.

16. Defendant admits that Defendant received a letter from Plaintiff on August 28, 1996 requesting the promissory notes; deny remaining allegations in paragraph.

17. Defendant admits that Defendant's records indicate receipt of a letter from Plaintiff on January 24, 1997 wherein Plaintiff requests the promissory notes and an itemization.

18. Defendant denies that Plaintiff called Defendant in January of 1997; Defendant's records indicate that Defendant received a letter from Plaintiff in January 1997 but not a telephone call. Admit that on January 24,1997 Defendant sent letter to Plaintiff. Deny remaining statements in paragraph.

19. Defendant admits that Defendant received letter from Plaintiff on February 18, 1997 wherein Plaintiff asks that all collection efforts cease and desist. Defendant admits that Defendant did not send any collection notices between January 25, 1997 and August 7, 1997. Defendant denies all remaining allegations in paragraph.

20. Defendant admits that on August 8, 1997 Defendant sent Plaintiff a letter informing him of an opportunity to pay his loan in full or to enter into a repayment arrangement and avoid collection costs, fees, interest and/or principal. Defendant admits that the notice requested documentation to prove that Plaintiff was not capable of paying his loan in full in order to make alternative repayment arrangements. Defendant admits that on October 30, 1997

Defendant received a letter from Plaintiff wherein he alleged that the school signed his name to the loan documents without his authorization and that he did not have a high school diploma or GED. Defendant admits that on September 2, 1998 Defendant received a letter from Plaintiff wherein he alleged that he withdrew from the school after one day, that he disputes the validity of the loan, that he did not have contact with the school again, and that he first heard of the loan in 1993 and not again until January 1996. Defendant denies the Defendant responded inappropriately.

21. Defendant admits that Defendant sent notice of proposed Treasury Offset on September 5, 1997. Defendant denies that Notice did not comply with 34 C.F.R. 30.1
    (a) Defendant denies.
    (b) Defendant admits statements as to bulletin L-77a; deny remaining allegations in (b).
    (c) Defendant denies.
    (d) Defendant denies.
    (e) Defendant denies.
22. Defendant denies that Plaintiff checked selections on the Unauthorized Signature Application; Defendant's records indicate that on April 3, 1998 Defendant received a letter from Plaintiff stating that he did not qualify for the unauthorized signature discharge. Defendant's records also indicate that Plaintiff did not return the discharge applications.
    (a) Defendant admits that on November 12, 1998 Plaintiff had a conversation with Defendant's Public Inquiry Contractor (PIC) and during the conversation the PIC employee explained that generally students do not receive loan proceeds directly and that if he believes that the school failed to pay him a refund he would need to send proof of such to the San Francisco service Center at Region 9.
    (b) Defendant admits.

(c) Defendant denies first sentence of paragraph 22(c)(c); Defendatn[sic] admits that Defendant received a letter from Plaintiff on April 3, 1998 but the unauthorized signature of unpaid refund discharge applications were not sent back to Defendant.

(d) Defendant admits that the dates are 5 years apart; deny remaining allegations in paragraph 22(d).

23. Defendant denies allegations in paragraph 23.

24. Defendant admits that Defendant sent correspondence to Plaintiff on July 24, 1998 notifying him that Defendant had placed his account with a new collection agency. Defendant admits that Defendant received correspondence from Plaintiff on September 2, 1998 wherein he states that he never received the loan, that he withdrew from the school after one day, that he had not heard anything about the loan until 1993, that he confirmed his signature on the promissory note and that he had not had any response to his requests to the hearings branch.

25. Defendant denies all allegations in paragraph 25.

26. Defendant denies all allegations in paragraph 26.

27. Defendant denies all allegations in paragraph 27.

28. Defendant admits that in Plaintiff's Exhibit J, Defendant informed Plaintiff that signing of a promissory note established his obligation to repay the loan; Defendant denies all other allegations in paragraph 28.

29. Defendant denies all allegations in paragraph 29.

30. Defendant denies all allegations in paragraph 30.

31. Defendant denies all allegations in paragraph 31.

32. Defendant admits first sentence as to contents of Plaintiff's Exhibit J. Defendant denies remaining allegations in paragraph 32.

33. Defendant is without sufficient information to admit or deny remaining statements regarding Plaintiff's telephone messages and therefore denies. Defendant admits that between November 12, 1998 and October

28, 1999 Defendant did not contact Plaintiff about his loan.

34. Defendant admits that between October 29, 1999 to January 16, 2000 a collection agency sent requests for payment to Plaintiff. Defendant lacks sufficient information to admit or deny remaining allegations regarding his Complaint to the Colorado Collection Agency Board and therefore denies.
35. Defendant denies all allegations in paragraph 35.
36. Defendant admits the first sentence of paragraph 36.
    (a) Defendant denies allegations in (a).
    (b) Plaintiffs first sentence is a recitation from a public law and Defendant refers to the law itself. Defendant denies remaining allegations in (b).
    (c) Defendant denies allegations in (c).
37. Defendant admits the first sentence. Defendant denies remaining allegations in paragraph 37.
38. Defendant admits the existence of Exhibit N; deny remaining allegations of paragraph 38.
39. The remaining paragraphs are Plaintiffs demand for relief to which no response is required; to the extent a response is required Defendant denies that Plaintiff is entitled to the relief demanded in the Compliant or to any relief whatsoever. Defendant denies all allegations of the Complaint not expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

1. Plaintiffs Complaint Fails to state a claim upon which relief can be granted.
2. This Court lacks jurisdiction because Plaintiff has not properly plead a wavier of sovereign immunity under which the United States can be sued.
3. This Court lacks jurisdiction with regard to prayer for injunctive relief against the Department of Education
4. This Court lacks jurisdiction due to failure to institute or exhaust administrative prerequisites to jurisdiction under the Federal Tort Claims Act).
5. Plaintiffs signature of the promissory note for the loan at issue is cause for estoppel to deny liability there-

under for the loan amount and accrued interest, fees and charges.

WHEREFORE, having responded to the allegations of the Complaint, the Defendant Department of Education prays for relief as follows:

1. That the Court dismiss Plaintiffs claim with prejudice,
2. That the Court award attorneys fees and costs for Defendant, and
3. For such other just and equitable relief as this Court deems proper.

RESPECTFULLY SUBMITTED this 19th day of March, 2001.

THOMAS L. STRICKLAND s/*Paul Johns*
United States Attorney By: Paul Johns
Assistant United States Attorney
1225 17 Street, Suite 700 Denver, Colorado 80202
(303) 454-0100

#13 Consent (jurisdictional) 5/3/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court District of Colorado 2001 MAY-3 AM 10:12 James R. Manspeaker Clerk by ___ Dep. Clk}

Civil Number: 01-B-0036

Bruce Edwards, 1001 Emporia Street
Aurora, Colorado 80010-3825
Plaintiff

v.

Kenneth R. Buck, Assistant United States Attorney, 1225 Seventeenth Street, Suite 700, Denver, Colorado 80202 for United States Department of Education
Defendant

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and D.C.COLO.LR 72.6, you are hereby notified that a United States magistrate judge of this district court is available to handle all dispositive

matters in this civil action, including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge, however, is permitted only if all parties voluntarily consent and the district judge orders the reference to a magistrate judge under 28 U.S.C. § 636(c).

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identify of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

Pursuant to D.C.COLO.LR 72.6, no district judge or magistrate judge, court official, or court employee may attempt to influence the granting or withholding of consent to the reference of any civil matter to a magistrate judge under this rule.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the appropriate United States Court of Appeals in the same manner as an appeal from any other judgement of a district court.

If this civil action has been referred to a magistrate judge to handle certain nondispositive matters, that reference shall remain in effect. Upon entry of an order of reference prusuant to 28 U.S.C. § 636(c), the civil action will be drawn randomly to a magistrate judge, excluding the magistrate judge previously assigned.

Having received the above information and in accordance with the provisions of 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and D.C.COLO.LR 72.6, the parties in this civil action hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in this case,

Signature	Party Represented	Date
s/*Bruce Edwards* BRUCE EDWARDS	Plaintiff, pro se	*4.29.01*
s/*Kenneth R. Buck* KENNETH R. BUCK	Defendant	*5/2/01*

#40 Mtn. for Sum. Jgmt/Dismiss 10/01/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed District Court District of Colorado BB
2001 OCT-1 PM 4:14 James R. Manspeaker, Clerk by s/K dep. clk}

Civil Action No. 01-BB-36
BRUCE EDWARDS,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS PUIRSUANT TO FED. R. CIV. P. 12(b)(1)

Defendant United States Department of Education, by and through United States Attorney John W. Suthers and Assistant United States Attorney Peter Krumholz, hereby files this Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1). As reasons therefor, Defendant states as follows:

1. Plaintiff Bruce Edwards filed the complaint in this case on January 8, 2001. He asserts several claims against the Department of Education, including a claim under the Administrative Procedure Act, a claim for injunctive relief, and a claim for recovery of damages that he claims to have sustained as a result of Defendant's actions. The essence of his cause of action is his assertion that a student loan he owes to the Department of Education is invalid.
2. For the reasons set forth in the accompanying Memorandum Brief in Support of Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), Defendant respectfully moves this Court for summary judgment in its favor or, in the alternative, dismissal of Plaintiff's complaint for lack of subject matter jurisdiction.

WHEREFORE, Defendant respectfully submits that there is no genuine issue as to any material facts, and

that this Court should grant a summary judgment in favor of Defendant. In the alternative, Defendant submits that this court lacks subject matter jurisdiction over Plaintiff's claims, and the case should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

DATED this 1st day of October, 2001.

Respectfully Submitted,

JOHN W. SUTHERS
United States Attorney

s/*Peter Krumholz*
Peter Krumholz
Assistant United States Attorney
1225 Seventeenth St., Suite 700 Denver, CO 80202
(303) 454-0100

#41 Memo. Brief in Suppt. (disp. mtn.) 10/1/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed District Court District of Colorado *BB* 2001 OCT-1 PM 4:14 James R. Manspeaker, Clerk by s/*K* dep. clk}

Civil Action No. 01-BB-36

BRUCE EDWARDS,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant

MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1)

Defendant United States Department of Education, by and through United States Attorney John W. Suthers and Assistant United States Attorney Peter Krumholz, hereby files this Memorandum Brief in Support of Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1).

INTRODUCTION

Plaintiff seeks to have this Court review a final agency decision under the Administrative Procedure Act, 5 U.S.C. § 704 with regard to the validity of his student loan debt. Complaint, ¶ 2. Plaintiff also alleges that he

does not owe the loan in question because he did not receive the money directly and because he withdrew from the school prior to the end of the loan period. *Id.*, ¶ 7. Plaintiff also seeks an injunction ceasing all collection activity on his account and seeks damages for the Department of Education's allegedly tortious conduct. *Id.*, ¶¶ 39, 42.

STATUTORY AND REGULATORY BACKGROUND

A. Overview of the Federal Family Education Loan Program

Under the Federal Family Education Loan Program ("FFELP"), a private lender provides the student with the money and a State or non-profit guaranty agency guarantees the loans. The Department of Education serves as the reinsurer of the loans pursuant to a reinsurance agreement with the guaranty agency. If a borrower of a FFELP loan defaults, files a bankruptcy petition, dies or becomes disabled, the guaranty agency reimburses the holder of the loan, takes assignment of the loan and promptly claims reimbursement from the Department of Education under its reinsurance agreement. 34 C.F.R. § 682.406. Even after the Department of Education pays the reinsurance claim, the guaranty agency is under an obligation to use due diligence to collect on the loan. If the guaranty agency is unsuccessful in collecting the loan, it may assign the loan to the Department of Education, who then takes title of the loan and engages in its own collection efforts.

Under the Higher Education Act and the applicable regulations, the Department of Education provides Title IV borrowers with relief from their FFELP loan obligations for death, total and permanent disability, false certification, closed school, and unpaid refunds. In general, requests for any type of administrative discharge relief are made to the current holder of the loan. Borrowers who received FFELP loans on or after January 1, 1986 may obtain a total or partial discharge of their loan obligation if the school they attended failed to make a refund that would have been applied to reduce their

loan balance. 34 C.F .R. § 682.402. Borrowers who have FFELP loans that were disbursed prior to January 1, 1986 are, according to the Department of Education's policy, eligible for the same unpaid refund relief as those borrowers whose FFELP loans were disbursed after January 1, 1986.

B. Treasury Offset Program

Under the Treasury Offset Program ("TOP"), federal agencies that are owed a legally enforceable debt by an individual must notify the Secretary of Treasury of the amount of the debt so that it may be collected by offset from payments that Treasury would otherwise pay to the person. *See* 31 U.S.C. §§ 3716 *et seq.* Payments such as income tax refunds, retirement payments, black lung benefits payments, and Railroad Retirement Board benefits may be withheld under TOP. *See* 31 U.S.C. § 3720A(a) (Income Tax Refund Payments); 26 U.S.C. § 6402(d) (same); 31 U.S.C. 3716(a) & (c) (administrative offset); 31 C.F.R. 285.2 (Tax Refund Payments). The TOP statute requires the federal agency to give the debtor notice and an opportunity to be heard as to the validity of the debt, prior to certifying to Treasury that the debt is eligible for offset. *See* 31 U.S.C. §§ 3716(a), 3720A(b). Prior to 1998, notice was required to be provided every year. However, the current regulations only require one certification, and once an account is certified in TOP, it will remain so until it is paid in full. Declaration of Nicholas Navarro ("Navarro Decl."), ¶15 (attached hereto as Exh. 1).

Department of Education actively participates in TOP to collect defaulted student loans. In accordance with Congress' mandate, the Department has promulgated regulations governing the collection of student loans by administrative offset. *See* 34 C.F.R. §§ 30.20 30.31. In order to participate in TOP, the Department of Education must certify to Treasury that it has given the debtor written notice of the[sic] its intent to offset. *See* 34 C.F.R. § 30.22(a)(1). Specifically, "[t]he Secretary mails a notice letter to the debtor at the current address of the debtor."

See 34 C.F.R. § 30.22(a)(2). The TOP notice includes information regarding: (1) the nature and amount of the debt, (2) the Department of Education's intent to offset, and (3) the debtor's opportunity to (i) inspect and copy relevant records; (ii) obtain a review within the Department of the existence or amount of the debt; and (iii) enter into a written agreement to repay the debt. *See* 34 C.F.R. § 30.22(b)(3). If the borrower does not present a timely objection to the notice, the account is certified with Treasury and any federal benefits will be offset and applied to the debt. If any offsets are taken, the date of the offset and the amount are recorded on the Debt Management Collection System ("DMCS"). Treasury sends a notice to the borrower that an offset has been taken and applied to a particular federal debt.

FACTS

A. Plaintiff's Loan

1. On May 6, 1985, Plaintiff applied for a Guaranteed Student Loan (now called a Federal Family Education Loan) in the amount of $2,500.00 to attend the Travel and Trade Career Institute (""TTCI"). Navarro Decl. ¶ 17.

2. According to this application, the loan period was for May 1985 until November 1985. Thereafter, on June 17, 1985, Plaintiff signed a Promissory Note, for a Stafford loan in the amount of $2,500.00 at 8% interest. First Independent Bank was the lender and the California Student Aid Commission (CSAC) guaranteed the loan. *Id.*

3. Plaintiff defaulted on his loan on April 15, 1987. Thereafter, the lender requested payment from CSAC, which paid the lender the original principal ($2,500.00) and capitalized (added to the principal) $174.79 of unpaid, accrued interest. CSAC then requested reimbursement on the loan from the Department of Education through the reinsurance agreement. Education reimbursed CSAC. *Id.*, ¶ 18.

4. As is customary under the FFELP, CSAC then attempted to collect the debt from Plaintiff. CSAC was able to collect $211.85 from Plaintiff prior to the

Department of Education taking assignment of the loan on May 25, 1993. Navarro Decl. ¶ 18.

5. According to records from the school, on May 7, 1985, Plaintiff signed an Enrollment Agreement agreeing to pay the $3,755.00 tuition and fees and verifying that he had financed $3,635.00 to attend the school. Declaration of Glenda Rasca ("Rasca Decl."), ¶ 4 (attached hereto as Exh. 1[sic]).

6. The Institute maintains computerized attendance records that indicate what days the student attended class, what class he attended, and how many credit hours he received for attending. According to these records, Plaintiff attended TTCI from May 20, 1985 to November 11, 1985. *Id.*, ¶ 9.

7. Plaintiff received $1,950.00 in Pell Grants to fund his tuition at TTCI. *Id.*, ¶ 5. On August 14, 1985 Plaintiff signed the first check for the Pell Grant, in the amount of $975.00. The check indicated that TTCI had been paid $2,459.58 toward Plaintiff's total cost of $3, 755.00. *Id.*, ¶ 6.

8. Plaintiff signed another check, in the amount of $656.00, on October 3, 1985. *Id.* On the face of this second check, the words "Must have completed 18 units for this check; [t]his check is for student" written on it. *Id.*, ¶ 7.

9. Also on October 3, 1985, Plaintiff signed the third and final Pell Grant check, in the amount of $319.00. This check had the words "Must have completed 12[sic] units for this check; this check is for school" written on it. *Id.*

B. Collection Efforts

10. The Department of Education took assignment of Plaintiff's loan on May 25, 1993. Navarro Decl. ¶ 18. According to Education's DMCS records, Education began collection activity in 1993. *Id.*, ¶ 19. Education sent the first demand letter to Plaintiff on May 26, 1993. *Id.*, ¶ 20. This letter was sent to Plaintiff at 623 E Broad[sic] Street, in California, zip code 90802. The letter was

returned as undeliverable, as were the two letters that Education sent on June 27, 1993 and July 18, 1993. *Id.*

11. Thereafter, Education continued to send notices to Plaintiff at this "623 E Broadway" address with varying success. Despite his obligation to maintain contact with the holder of his note and to inform the holder of his current address and telephone number, Plaintiff failed to do so. Some of the letters were returned, while others were not. *Id.*, ¶ 20.

12. Finally, on January 17, 1996 Education obtained a different address in Colorado. Only one of the letters sent to this address was returned as undeliverable. *Id.* 13. In addition to sending collection letters, Education and/or its contractors made numerous telephone calls to Plaintiff in an attempt to collect his student loan. *Id.*, ¶ 21.

14. The first attempt to telephone Plaintiff after the Department Education took assignment of his loan was through a collection agency[1] on December 9, 1993. *Id.*, ¶ 22.

15. Plaintiff contacted the Department of Education, through the collection agency, for the first time on June 25, 1996, by a letter wherein he requested a copy of his Promissory Note. The collection agency sent Plaintiff the promissory note on July 11, 1996 and resent the note on August 28, 1996. Navarro Decl. ¶ 22.

16. On February 18, 1997, Plaintiff again wrote to the collection agency requesting that he not receive mail at his home address. Thereafter, the collection agency ceased telephoning Plaintiff until October 30, 2000 and collection notices were not sent to Plaintiff until August 8, 1997. *Id.*, ¶ 23.

17. On September 21, 1993 the Department of Education began sending Plaintiff notices that it would refer his

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[1] Between October 23, 1993 and February 24, 1996 Plaintiff's account had been referred to a private collection agency. His account has been referred to a total of five collection agencies since 1993.

debt for collection by offset through TOP; the same notice was sent every year until September 5, 1997. *Id.*, ¶ 24.

18. On October 16, 1997, Plaintiff submitted a hearing request objecting to the offset and alleging that the school improperly certified his ability to benefit and that the school improperly signed his name to endorse his loan documents. *Id.*, ¶ 25.

19. Shirley Amey, a Senior Loan Analyst in the Hearings Branch of Education's San Francisco Service Center, responded to Plaintiffs hearing request on October 30, 1997. *Id.*, ¶ 26. She indicated that he needed to submit a sworn statement and that collection efforts would continue until he submitted it. She sent Plaintiff applications for administrative discharges pursuant to 34 C.F.R. § 682.402 (Ability to Benefit (ATB) and Unauthorized Signature) and a copy of his promissory note. *Id.*

20. On April 3, 1998 the Department of Education received a letter from Plaintiff in response to Ms. Amey's October 30 letter, indicating that he did not fit in the ATB or Unauthorized Signature discharge categories and that he did not owe the debt. *Id.*, ¶ 27.

21. On September 2, 1998 in a letter to the collection agency, Plaintiff alleged that he did not receive the loan that the Department of Education was attempting to collect. Navarro Decl. ¶ 28. He stated that he was not disputing that he took out the loan and signed the Promissory Note but that he only attended the first class of his school before he withdrew. He alleged that he submitted a written withdrawal form at the advice of the school administrator, and that he never had contact with the school again; he also stated that he never received any documents regarding his loan until 1993 and then not again until 1996. He relayed the same defense in a telephone call on November 12, 1998. *Id.*, ¶ 28.

22. On November 12, 1998, in a letter over the signature Diane Spadoni, Regional Director of Education's Debt Collection Service, the Department of Education wrote to Plaintiff in response to his September 2 correspondence. This letter explained that it is the bor-

rower's responsibility to maintain contact with the holder of his loan and that if a refund was due to him, it would have been made in accordance with the school's published refund policy. The letter instructed him to submit any evidence he may have showing that he was due a refund and that Education would investigate his claim. *Id.*, ¶ 29.

23. In an August 31, 2000 letter, the Department of Education responded to another letter from Plaintiff, explaining that there is no longer a statute of limitations on collection of student loans and that it would continue to refer his debt for collection by TOP until his debt was paid in full. *Id.*, ¶ 30. Thereafter, on September 22, 2000, the Department of Education received payment of $234.32 from Treasury offset of Plaintiff's federal benefits. *Id.*, ¶31.

24. As of September 25, 2001 Plaintiffs balance is $5,321.10 ($2,666.94 in principal and $2,654.16 in accrued, unpaid interest). Interest accrues on his loan at the rate of.58 per day. Navarro Decl. ¶ 32.

ARGUMENT

I. DEFENDANT'S REJECTION OF PLAINTIFF'S ADMINISTRATIVE CLAIM WAS NEITHER ARBITRARY, CAPRICIOUS NOR AN ABUSE OF DISCRETION

The Department of Education's actions here are judged under the standards established in the Administrative Procedure Act, 5 U.S.C. § 706. This requires Plaintiff to demonstrate that the Department of Education's actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...." 5 U.S.C. § 706(2)(A). While the court's inquiry here must no doubt be "searching and careful," it is well settled that such inquiry is ultimately narrow and limited to "whether the [Secretary's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park v. Volpe,* 401 U.S. 402, 416 (1971); *United States v. Akzo Coatings of Am., Inc.,* 949 F.2d 1409, 1426 (6th Cir. 1991). Indeed, the court "is not empowered to substitute its judgment for that of the agency." *Overton Park,* 401 U.S.

at 416. The agency's decision must be affirmed if it is rationally based. *Bowman Transp., Inc. v. Arkansas Best Freight Sys.*, 419 U.S. 281, 285 (1974). In this case, Plaintiff seeks review of the Department of Education's August 31, 2000 letter rejecting his claim that his loan is unenforceable due to the statute of limitations and that his loan is ineligible for collection through TOP. Prior to the issuance of that letter, the Department had issued a series of sound administrative decisions with regard to Plaintiff s various arguments protesting his obligation on this student loan. The final decision, which is at issue in this lawsuit, was Ms. Spadoni's letter dated August 31, 2000. This and each prior decision was made in accordance with the law regarding the statute of limitations for collection of student loans and TOP, and in light of the factual circumstances of Plaintiff s situation and his arguments why he did not owe the loan. It was not arbitrary or capricious and should be upheld.

The initial dispute preceding the August 31, 2000 decision began in 1997 when Plaintiff raised his first objection to certification of his account in TOP. According to the Treasury and Department of Education regulations, on September 5, 1997, the Department of Education sent Plaintiff a notice to his last known address informing him that his student loan debt would be certified for TOP and that his federal benefits would be offset.[2] Navarro Decl. ¶ 24. The notice stated: (1) the nature and amount of his debt, (2) Education's intent to offset, and (3) offered Plaintiff the opportunity to (i) inspect and copy relevant records; (ii) obtain a review within Education of the existence or amount of the debt; and (iii) enter into a written agreement to repay the debt. See 34 C.F .R. § 30.22(b)(3). In response, Plaintiff submitted a request for review objecting to the decision to certify his account for TOP because TTCI signed his loan documents and falsely

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[2] The Department of Education had been sending N18 notices to Plaintiff annually since 1993; however, it was not until 1996 that the notice was successfully delivered to him. Navarro Decl. ¶24.

certified his ability to benefit. Compl. ¶ 22; see 34 C.F.R. §682.402(e). Ms. Shirley, a Department of Education employee, responded to his Request for Review in a decision dated October 30, 1997. Navarro Decl. ¶ 24. In this letter, Ms. Shirley stated that the Department of Education noted his objection to the offset with regard to the false certification for ability to benefit, but that pursuant to regulations, he could only qualify for this administrative discharge if he obtained his loan after January 1, 1986 and he submitted a sworn statement. Ms. Shirley also noted Plaintiff's objection to the loan based on a claim of unauthorized signature, but that he was required to submit a sworn statement for this claim also. *See* 34 C.F .R. § 682.402(e). Ms. Shirley provided Plaintiff with the applications for both the ATB and unauthorized signature administrative discharges. Ms. Shirley's decisions in her letter were in accordance with Education's regulations and Plaintiff's specific objections to his loan obligation and certification of his account in TOP.

On April 3, 1998, Ms. Shirley received a letter from Plaintiff in which he stated that he did not qualify for either the A TB or unauthorized signature administrative discharges because he did not have anything to do with TTCI after the first class. Navarro Decl. ¶ 27; Compl., Exhibit H. He did not return either of the Discharge applications with his April 3 letter. On September 2, 1998, the private collection agency to which Education had referred Plaintiff's account received a letter from Plaintiff. *Id.*, ¶ 28. In this letter, Plaintiff stated that he did not dispute that he requested the loan but argued that he did not attend TTCI after the first class, that he was never contacted by the school after he submitted a withdrawal slip, that he never received any documents regarding the loan until 1993 and then not again until 1996, and that he has not received a response to his hearing request. *Id.*, ¶ 28. On November 12, 1998 Education sent Plaintiff a letter, signed by Ms. Spadoni, responding to his letter to the collection agency. *Id.*, ¶ 29; Compl., Exhibit J. The letter pointed out that it is Plain-

tiff s responsibility to maintain contact with the holder of his loan and that the promissory note is a binding, legal document enforceable against him.[3] The letter stated to him that school loans are, by law, disbursed by checks or electronic funds transfers, which must be sent to the school attended by the borrower, and typically applied to the student's tuition and expense, and that the student may never directly receive any loan money. The letter also stated that if Plaintiff has evidence that he is due a refund from the school, he could submit such evidence to the Department of Education for investigation. Navarro Decl. ¶ 29. This decision was in accordance with Plaintiff's promissory note, the Higher Education Act and regulations governing unpaid refunds, and common law principles governing loan contracts.

On August 31, 2000, the Department of Education sent another letter to Plaintiff, signed by Ms. Spadoni, responding to correspondence from Plaintiff wherein he argued that his loan was too old to be collected and that his account should not be certified for TOP. *Id.*, ¶ 30. The letter noted that the Department of Education was permitted to collect his loan despite its age because the applicable amendments to the Higher Education Act of 1965 eliminated the statute of limitations on collection of student loans. *Id.* The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub. L. No. 99-272 §16033, 100 Stat. 355 (1986) as enacted, had placed a Federal six year statute of limitations period, commencing upon assignment to the Department of Education, for suits to collect student loans held by the Department. However, the Higher Education Technical Amendments of 1991 (HETA), Pub. L. No. 102-26 §3(c), 105 Stat. 123

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[3] The Department of Education conducted skip traces to attempt to find Plaintiffs address and telephone number, including obtaining address information from Plaintiffs tax returns through IRS. See Navarro Decl., Exhibit E. Despite obtaining addresses from IRS and skip traces, notices sent to Plaintiff were still returned as undeliverable.

(1991), amended COBRA to remove the six year statute of limitations and made that change effective retroactively for any actions pending at the time COBRA was passed. The amendment states that no Federal or state law "shall terminate the period within which...a judgment may be enforced..." on a Title IV student loan by the Department, the U.S. Attorney General, the guarantor, or the school (for Perkins loans). HEA § 484A (codified as amended at 20 U.S.C. §1091a). Prior to July 1992, HETA contained a "sunset date" which limited the new law's effect to those action taken prior to November 15, 1992. HETA § 3(c). However, HETA has been amended to eliminate the sunset date. Pub. L. No. 102-325, §1551, 106. Stat. 838 (1992) (codified as amended 20 U.S.C. §1091a); *see also United States v. Phillips*, 20 F.3d 1005, 1007 (9th Cir. 1994) (finding that HETA eliminated all statutes of limitations on actions to recover on defaulted student loans and revived borrower's loans which were assigned to the Department of Education in 1976 and 1984).

In response to Plaintiff's objection to certification of his account in TOP, the Department of Education's letter pointed out that he had been given notice on September 5, 1997 of the Department's intention to certify his account for TOP and that if he did not respond to the notice, his account would be referred for offset on December 30, 1997. Navarro Decl. ¶ 30. Since Plaintiff did not raise this objection until nearly three years after the September 5, 1997 notification, it was untimely. Therefore, the Department of Education correctly found that Plaintiff had been given notice prior to the offset required by 31 U.S.C. §§3716 and 3720A, and that because Plaintiff failed to respond in a timely manner, it had properly referred his debt to Treasury for collection by TOP, and the resulting offset of his federal benefits was valid. Thus, the Department's decision that Plaintiff's loan was outstanding and enforceable and that Education had provided him proper notice prior to offsetting his federal benefits in TOP was reasonably based on the factual circumstances of Plaintiff's loan history and applicable legal principles and

statutes. The Department of Education's decision was not arbitrary or capricious nor was it an abuse of discretion and it should be upheld under this review.

B. Plaintiff Has Failed to Show a Genuine Issue of Material Fact, and Defendant Is Therefore Entitled to Summary Judgment As A Matter of Law

Summary judgment should be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is "material" if it might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby,* 477 U.S. 242, 248 (1986). The moving party need not affirmatively negate the nonmovant's claim in order to obtain summary judgment. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986). Rather, the movant only bears the initial burden of "'showing' – that is, point out to the district court – that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. In response to a motion for summary judgment, a plaintiff must produce more than a "mere scintilla" of evidence to establish the existence of a genuine issue of fact. See *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 252 (1986); *Adler v. Wal-Mart Stores,* 144 F.3d 664, 678 n.5 (10th Cir. 1998). In this case, Plaintiff admits to signing the Promissory Note in question and to attending TTCI for one class. The Department of Education has set forth evidence establishing that Plaintiff owes an outstanding student loan, that he attended TTCI for more than just one class and that he therefore received the loans in-kind at least by attending the school for the full loan period, and that he signed for Pell Grant checks to finance his tuition more than five months after his enrollment into TTCI. *See* Navarro and Rasca Declarations and Attachments thereto.

The Department of Education has provided evidence that shows Plaintiff applied for a FFEL loan to attend TTCI from May 1985 to November 1985. Navarro Decl. ¶

17 He signed the promissory note for this FFEL loan in June 1985. *Id.* Plaintiff defaulted on the loan on April 15, 1987. *Id.*, ¶ 18. After his default, the guaranty agency collected $211.85 from Plaintiff. In 1993, the Department of Education took assignment of Plaintiff's loan and attempted to collect the debt starting in May 1993. It was not until 1996 that Plaintiff first asserted that he did not receive the loan and that he did not attend TTCI after the first day of class. In statements to Department of Education staff or collection agency staff, Plaintiff admitted signing the promissory note but denies ever receiving the loan. *Id.*, ¶ 28. Contrary to Plaintiff's assertion, however, the Department of Education has presented records from TTCI showing that on May 7, 1985 Plaintiff signed an enrollment contract with TTCI to begin classes on May 20,1985 for a total tuition cost of $3,755.00. Rasca Decl. ¶ 9. Plaintiff agreed, in the enrollment contract, that he would finance $3,635.00 of the total tuition and he paid $120.00 as a deposit. *Id.*, ¶ 4. According to the school records, Plaintiff attended all eight modules of the Orientation Class from May 20, 1985 to July 12, 1985 and a Passenger Class from July 15, 1985 until at least the end of September 1985. *Id.*, ¶ 8. According to the school attendance records, Plaintiff was at TTCI until November 1985. *Id.*, ¶ 9.

Further, according to the school records, Plaintiff signed for three separate Pell Grant checks well after the first day of class in May 1985. *Id.*, ¶5. According to these documents, Plaintiff signed for $1,950.00 in Pell Grant checks between August 14, 1985 and October 3, 1995. On the first check dated August 13, 1985 there is an indication on the "Financial Aid Advances" section of the receipt that indicates receipt of $2,459.58 as a "prior payment" on Plaintiff's overall tuition. *Id.*, ¶ 5. The money from two of these Pell Grant checks was applied to Plaintiff's tuition (the $975 dated August 13, 1985 and the $319 check dated September 24, 1985) and the second Pell Grant check for $656.00 dated September 24, 1985, was given directly to Plaintiff. *Id.*, ¶¶ 6-7. If Plaintiff

had in fact withdrawn after the first class on May 20, Department of Education regulations would have required the school to return the loan money and grant to the Title IV programs and would have prohibited TTCI from making any additional disbursements to Plaintiff during that period of enrollment. *See* 34 C.F.R. § 668.22. Despite his allegation that the school owed him a refund, however, Plaintiff has failed to file any administrative discharge applications with the Department of Education even after it offered to review any evidence he submitted with regard to an unpaid refund. Navarro Decl. ¶ 29.

Under the Higher Education Act and Department of Education regulations, borrowers are permitted to apply for administrative discharges, including discharges for refunds of their loan proceeds that may have been due to them or the lender from the school. This administrative discharge option, however, is separate from a defense to repayment of a student loan based on school misconduct. Title IV of the Higher Education Act establishes the terms for borrower eligibility for loans and repayment obligations in a way that generally separates them from the school's performance of its educational duties and other student financial aid responsibilities. The structure of the HEA clearly separates the student's enrollment contract, which establishes and governs the performance of the borrower's relationship with the school, and the borrower's obligation under the loan programs and the borrower's repayment obligation under the loan contract. Thus, a claim against a school for having inadequate equipment, unqualified teachers or for failing to provide a good academic program is not a defense to repayment of a guaranteed student loan because the borrower's loan contract with the lender and the enrollment contract with the school are two separate transactions. *See Williams v. Nat'l Sch. of Health Tech.,* 836 F. Supp. 273, 282 (E.D. Pa 1993); *Bartels v. Alabama Commercial College Inc.,* 918 F. Supp. 1565 (S.D. Ga 1995), *aff'd,* 189 F.3d 483 (11th Cir. 1999), *cert. denied,* 528 U.S. 1074 (2000); *United States v. Durbin,* 64 F. Supp. 2d 635 (S.D. Tex. 1999); *Green v.*

United States Dep't of Educ., --F.Supp.2d--, 2000 WL 33421459, at *3-4 (W.D.N.C. Feb. 9, 2000).

Based on the Department of Education's evidence, however, Plaintiff attended TTCI well past May 1985, and he even signed for and received Pell Grant checks for payment towards his tuition as late as October 1985. This evidence rebuts any claim that he was owed a tuition refund by TTCI and also establishes that Plaintiff received the benefit of the loans by attending the school for the full loan period. The Department of Education has also shown that it was not until 1996 that Plaintiff raised any objection to this loan, despite the guaranty agency's collection efforts and receipt of $211.85 toward his loan. Finally, the Department of Education has shown that despite being provided with several administrative discharge applications and options to challenge TTCI's supposed failure to issue a refund, Plaintiff has failed to file any such discharge applications. Because there is no genuine issue of material fact to warrant further proceedings in this matter, Defendant is entitled to judgment as a matter of law.

C. Sovereign Immunity Prohibits Plaintiff from Obtaining an Injunction and an Order Ceasing Collection Activity

Absent a waiver of sovereign immunity, a district court lacks jurisdiction over claims against the federal government. *United States v. Mitchell,* 463 U.S. 206, 212 (1983). Where sovereign immunity is waived, moreover, the terms of the consent expressly limit the court's jurisdiction to entertain the suit. *See United States v. Sherwood,* 312 U.S. 584, 586 (1941). Waivers of sovereign immunity must be construed strictly in favor of the United States. *Library of Congress v. Shaw,* 478 U.S. 310, 318 (1986). The HEA contains a limited waiver of sovereign immunity to the extent that it allows Education to "sue and be sued," in certain State and district courts. See HEA § 467 (referencing § 432(a)(2)). However, that same provision of the HEA specifically forbids injunctions against the Department of Education. *See* 20 U.S.C. §

1082(a)(2) ("no attachment, injunction, garnishment, or other similar process...shall be issued against the Secretary or property under the Secretary's control..."). Section 1082(a)(2) prohibits all injunctive relief, except when the Secretary exercises powers that are clearly outside his statutory authority. *See, e.g., Green,* 2000 WL 33421459, at *3.

Here, Plaintiff's claim in paragraph 39 of his complaint seeks a cessation of collection activities and removal of his account from TOP, which is akin to a prayer for injunctive relief against the Department of Education. Pursuant to the HEA, injunctive relief is not a permissible remedy against the Department of Education's collection on a FFELP loan obligation. Thus, Plaintiff's complaint, to the extent it seeks injunctive relief, should be dismissed for lack of subject matter jurisdiction.

D. Plaintiff Has Failed to Exhaust His Administrative Remedies, Thus Barring His Request for Damages in Tort

Plaintiff seeks redress for the damages he suffered as a result of Education's alleged actions with regard to his student loan. These allegations assert causes of action sounding in tort and their consideration is therefore subject to the Federal Tort Claims Act ("FTCA"). See 28 U.S.C. §1346(b)(1). Under the FTCA, an individual may file an action against the United States in district court, provided that the individual first seeks administrative resolution of his claim with the applicable federal agency. *See* 20 U.S.C. § 2675(a). "Bringing an administrative claim is a jurisdictional prerequisite to suit, imposed by Congress, which the courts have no power to waive." *Nero v. Cherokee Nation of Okla.,* 892 F.2d 1457, 1463 (10th Cir. 1989). In this instance, Plaintiff did not file a claim for administrative relief. Plaintiff has therefore failed to exhaust his administrative remedies pursuant to the FTCA and his tort claim should be dismissed for failure to state a claim upon which relief can be granted.

CONCLUSION

Accordingly, for the reasons set forth herein, Defendant respectfully requests this Court to uphold its final administrative decision with regard to Plaintiff's student loan. Defendant further respectfully requests that this Court dismiss Plaintiff's claims for an injunction and tort claims with prejudice for failure to state a claim upon which relief can be granted, or alternatively, grant summary judgment in favor of Defendant.

DATED this 1st day of October, 2001.

Respectfully Submitted,

JOHN W. SUTHERS
United States Attorney

s/*Peter Krumholz*
Peter Krumholz
Assistant United States Attorney
1225 Seventeenth St., Suite 700 Denver, CO 80202
(303) 454-0100

Exhibit 1 9/27/01 Navarro declaration

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Number: 01-B-0036

BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

DECLARATION OF NICOLAS NAVARRO

JOB RESPONSIBILITY AND DUTIES

1. I am a Senior Loan Analyst in the Litigation Branch, San Francisco Service Center, Student Credit Management-Collections, Office of Student Financial Assistance, U.S. Department of Education (Education) I have held this position since [what date].

2. As a Senior Loan Analyst, my responsibilities are to assist United States Attorneys Offices with both Federal District Court and Bankruptcy Court litigation involving student loans. The litigation support provided includes, but is not limited to, the following: (1) providing background information on the individual's loan history

(including repayment history and forbearance/deferment history) and loan programs; (2) preparing responses to discovery requests, and especially providing responses to interrogatories and requests for production of documents; (3) providing information regarding repayment options available to the borrower; (4) providing testimony to the actual case either in person or by submission of a declaration/affidavit; and (5) facilitating settlement.

3. In the course of performing my responsibilities, I have become familiar with the various types of loans authorized by Title IV of the Higher Education Act (HEA) of 1965, as amended, and made by banks, by institutions of higher education, and by Education itself, and now held and collected by Education. I am familiar with (a) how Education receives information and creates and maintains records related to those loans, (b) the collection methods used by Education to collect these loans, including the Treasury Offset Program (TOP) and Administrative Wage Garnishment (AWG), (c) the various repayment plans and deferment/forbearance options available to Title IV borrowers, (d) the administrative discharge options offered pursuant to the HEA, and (e) Education's procedures for responding to notification of bankruptcy filings and discharge rulings.

4. In order to fulfill my responsibilities, I have access to electronic records maintained in Education's Debt Management and Collection System (DMCS), a computer database that contains pertinent information on all defaulted student loan accounts held by Education and serviced by Student Credit Management-Collections. Education's DMCS database contains records of payment transactions, collection actions, and telephonic and written contacts between borrowers and Education staff or the staff of Education's contractors. These records are created pursuant to Education's procedures by Education staff and by staff of contractors retained by Education to collect these loans, in the regular course of their duties at the time of the transaction or event recorded. The records contained in DMCS are made at or near the time of the

transaction recorded, by or from information transmitted by a person with knowledge of the transaction, and are kept in the course of Education's regularly conducted business of administration of the several loan programs under which these loans are made, pursuant to Education's regular practice of making and keeping such records.

5. I also have access to the National Student Loan Database System (NSLDS), a larger computer database that includes information on all outstanding loans made[1] pursuant to Title IV of the HEA, as well as a large body of loans made and paid off before inception of the NSLDS in 1994. The NSLDS includes a limited amount of information on loans not held by Education, including loans not in repayment status. This information is derived from regular reports to Education from the holders of the loans, including Education itself, based on the holder's regularly maintained records on these loans

6. As a Loan Analyst, I am also familiar with, and have access to, various other loan records maintained by Education and created by Education and prior holder regarding defaulted, Federally financed student loans that Education holds. In addition to the electronic records already described, these loan records include documents such as the application and promissory note, guaranty claim, correspondence, payment records, and other records that evidence transactions between the borrower and the holders of his or her loan, including Education and the original lender, and, for guaranteed loans, the loan guarantor, servicer, and secondary market.

OVERVIEW OF THE FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFELP)

7. The FFELP (formerly the Guaranteed Student Loan (GSL) Program) is authorized under Title IV, Part B

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[1] NSLDS does include information on some loans made pursuant to Title IV of the HEA prior to 1994, since many Title IV participants were able to provide informnation on those loans in a manner that permitted inclusion into NSLDS.

of the Higher Education Act of 1965, as amended, 20 USC § 1071 et seq.

8. Four types of loans are offered under FFELP: Subsidized Staffords, (also called Staffords), Unsubsidized Staffords, formerly known as Supplemental Loans for Students (SLS),[2] PLUS (Parent Loan for Undergraduate Students), and Consolidation loans.

9. Under the FFELP, lenders use their own funds to make loans to qualified borrowers to facilitate their attendance at eligible postsecondary schools. These loans are guaranteed by State agencies or non-profit organizations and are reinsured and often subsidized by Education.

10. In the event of a borrower's default in repaying the loan, the guaranty agency, pursuant to its guarantee commitment, pays on the claim to the holder of the loan, which may be either the original lender or another eligible financial institution to whom the loan was assigned, and takes assignment of the loan,

11. The guaranty agency, after paying a default claim, promptly files a claim with Education under the reinsurance agreement. Education reimburses the guaranty agency a percentage of the losses the guaranty agency incurs in honoring default claims on qualifying loans. After the guarantor has been reimbursed, it must try to collect the debt from the defaulter, using its own dunning letters, administrative wage garnishment (AWG), collection agency efforts and placing the defaulter into the Treasury Offset Program (TOP). The guarantor must remit to Education a corresponding percentage of any amounts it recovers directly from the defaulter. If the guaranty agency obtains no payment from the debtor for a significant period, Education may require the guarantor to assign the loan to Education.

12. After Education takes assignment of a defaulted loan, it engages in its own collection efforts, including

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[2] Prior to the SLS program the loans were called Auxiliary Loans to Assist Students Progranm (ALAS). Once the SLS loan authority ended on July 1, 1994, Unsubsidized Staffords were authorized.

dunning, referral to private collection agencies, TOP, AWG, and, as a last resort, referral to the U S Attorney's offices for litigation

OVERVIEW OF THE TREASURY OFFSET PROGRAM (TOP)

13. Federal agencies that are owed a legally enforceable debt are required to notify the Secretary of Treasury of the amount of the debt so that it may be collected by offset from payments that Treasury would otherwise pay to the individual. Payments such as income tax refunds, retirement payments, Federal employee's salaries, Black lung benefits payments, and Railroad Retirement Board benefits may be withheld under TOP. Education has actively participated in TOP to collect defaulted student loans since 1986.

14. The TOP statute require the Federal agency to give the debtor notice and an opportunity to be heard regarding the validity of the debt, prior to certifying to Treasury that the debt is eligible for offset. Thus, prior to certifying the account for TOP, the Secretary mails an N18 or N19 notice letter to the debtor at the current address of the debtor, as determined by the Secretary from information regarding the debt maintained by the agency. The notice includes information regarding: (l) the nature and amount of the debt, (2) Education's intent to offset, and (3) the debtor's opportunity to (i) inspect and copy relevant records; (ii) obtain a review within Education of the existence or amount of the debt; and (iii) enter into a written agreement to repay the debt. If the borrower does not present a timely objection to the TOP notice, the account is certified with Treasury and any federal benefits will be offset and applied to the Education debt.

15. Until 1998, TOP operated by means of annual referrals for offset by Federal agencies to Treasury (or, from 1986 to 1996, directly to the IRS, when the program was known as the Tax Refund Offset Program). Debts not collected by offset during one calendar year were recycled in succeeding years until paid. Thus, in December of each calendar year from 1985 through 1996, Education com-

bined those debts on loans it held with the debts held by the guarantors, and referred the combined total to Treasury for offset in the next calendar, or "processing," year. In December 1997, Treasury changed this annual offset process to a perennial process; thereafter, once an offset was requested, Treasury pursued offset indefinitely, until the debt was fully satisfied by offset. Thus, for the process year 1998 and thereafter, before the initial referral for offset, Education provided notice of the proposed offset and an opportunity to object or repay voluntarily, but did not repeat that notice thereafter for those debts, which were permanently certified into TOP.

16. If any offsets are taken, the date of the offset and the amount are record[sic] on Education's Debt Management Collection System (hereinafter "DMCS") Treasury sends a notice to the borrower that an offset has been taken and applied to a particular federal debt.

SPECIFICS OF BRUCE EDWARD'S FFELP LOAN

17. On May 6, 1985, Mr. Edwards (Plaintiff) applied for a Guaranteed Student Loan (now called a Federal Family Education Loan) in the amount of $2,500.00 to attend the Travel and Trade Career Institute ("TTCI"). Exhibit A (Application). According to this application, his anticipated completion date was November 1985. Thereafter, on June 17 1985, Plaintiff signed a Promissory Note, for a Stafford loan in the amount of $2,500.00 at 8% interest. Exhibit B (Promissory Note). First Independent Bank was the lender and the California Student Aid Commission (CSAC) guaranteed the loan.

18. Plaintiff defaulted on his loan on April 15, 1987. Exhibit C (GSL Specific Screen or R107 Screen and Explanatory Sheet). Thereafter, the lender requested payment from CSAC. CSAC paid the lender the original principal ($2,500.00) and capitalized (added to the principal) $174.79 of unpaid, accrued interest. CSAC then requested reimbursement on the loan from Education through the reinsurance agreement. Education reimbursed CSAC, however, CSAC continued to attempt to collect the debt from Plaintiff. Exhibit D. CSAC was

able to collect $211 85 from Plaintiff between 1987 and 1993. Education took assignment of the loan on May 25, 1993.

19. According to Education's DMCS records, Education began collection activity on Plaintiffs loan in 1993. Between October 23, 1993 and February 24, 1996 Plaintiff's account had been referred to a private collection agency. His account has been referred to a total of five collection agencies since 1993.

20. Education sent the first demand letter to Plaintiff on May 26, 1993. Exhibit D (Letter History Screen or L106 screen). This letter was sent to Plaintiff at 623 E Broad[sic] Street, in California, zip code 90802. The letter was returned as undeliverable, as were the two letters that Education sent on June 27, 1993 and July 18, 1993. Thereafter, Education continued to send notices to Plaintiff at this "623 E Broadway" address with varying success. Finally, on January 17, 1996 Education obtained a different address in Colorado. Only one of the letters sent to this address was returned as undeliverable.

21. Education and/or its contractors made numerous telephone calls to Plaintiff in an attempt to collect his student loan. Exhibit E (the Collector Note Pad, or L I 02 Screen). The LI02 screen maintains a record of all activity on a student's account (except that it does not record the letters that are sent to the borrower as on the L106 Screen). The L102 records all of the telephone calls made to the borrower and from the borrower and a summary of the contents of the telephone conversation, a summary of all correspondence received from the borrower or regarding his account, a summary of any action taken by Education staff or contractors on the account, notation of a Skip Trace, an offset or a wage garnishment.

22. In this case, the first attempt to telephone Plaintiff after Education took assignment of his loan was on December 9, 1993. Exhibit E. The first time Plaintiff contacted Education, through the collection agency, regarding his loan was on June 25, 1996. On this day, Plaintiff received a letter from Plaintiff wherein he sought

a copy of his Promissory Note. The collection agency sent Plaintiff the promissory note on July 11, 1996 and resent the notes on August 28, 1996.

23. On February 18, 1997, Plaintiff again wrote to the collection agency requesting that he not receive mail at his home address; no collection notices were sent to Plaintiff until August 8, 1997 and no telephone contact was made to Plaintiff until October 30, 2000. See Exhibit D and E.

24. On September 21, 1993 Education sent Plaintiff an N18 notice informing him that his account would be placed into the Treasury Offset Program. See Exhibit D. Due to privacy laws, the address to which the N18 letter was sent will not show up on the L106 Screen if Education obtained the address from IRS records. Despite the fact that Education had obtained Plaintiff's address from IRS, the N18 letter was returned as undeliverable. The same N18 letter was sent to Plaintiff again on September 2, 1994 using an address from IRS; it was returned undeliverable Education sent another N18 letter to Plaintiff on September 7, 1995 using an address from IRS; it was returned as undeliverable. On August 18, 1996, Education sent an N18 letter to Plaintiff at the address it had for him, 623 East Broadway # 1; this letter was not returned. On September 5, 1997, Education sent Plaintiff an N18 letter using an address from IRS; this letter was not returned.

25. On October 16, 1997, Plaintiff submitted a hearing request objecting to the offset and alleging that the school improperly certified his ability to benefit and that the school improperly endorsed his loan documents.

26. Shirley Amey, a Senior Loan Analyst in the Hearings Branch of Education's San Francisco Service Center, responded to Plaintiffs hearing request on October 30, 1997. Exhibit D. She indicated that he needed to submit a sworn statement and collection efforts would continue until he submitted it. She sent Plaintiff applications for the Ability to Benefit/False Certification and Unauthor-

ized Signature Administrative discharges and a copy of his promissory note. Exhibit D.

27 On April 3, 1998 Education received a letter from Plaintiff in response to Ms Amey's October 30th letter, indicating that he did not fit in the Ability to Benefit or Unauthorized Signature discharge categories but that he did not owe the debt. Exhibit D.

28. On September 2, 1998 in a letter to the collection agency, Plaintiff alleged that he did not receive the loan that Education was attempting to collect. Exhibit D. He stated that he was not disputing that he took out the loan and signed the Promissory Note but that he only attended the first class of his school before he withdrew. He alleged that he submitted a written withdrawal form at the advice of the school administrator and that he never had contact with the school again and that he never received any documents regarding his loan until 1993. He relayed the same defense in a telephone call to Education's Public Inquiry Contractor on November 12, 1998.

29. On November 12, 1998, Diane Spadoni, Regional Director of Education's Debt Collection Service, responded to Plaintiff September 2nd correspondence. She explained to him in this letter that it is the borrower's responsibility to remember his obligation and maintain contact with the holder of his loan and that if a refund was due to him, it would have been made in accordance with the school's published refund policy. She also suggested that he submit any evidence he have to Education regarding an unpaid refund and that Education would investigate his claim.

30. On August 31, 2000, Ms. Spadoni responded to another objection that Plaintiff raised to his loans[sic]. Ms. Spadoni pointed out that there is no longer a statute of limitations on collection of student loans and that Education had notified him that he would be placed in TOP until his debt was paid in full. Exhibit D.

31. On September 22, 2000 Education offset $234.32 from Plaintiff's federal benefits. Exhibit F (Account Transaction or R103 screen and explanatory sheet).

32. As of September 25, 2001 Plaintiff's balance is $5,321.10 ($2,666.94 in principal and $2,654.16 in accrued, unpaid intereset). Exhibit G (R101 Screen). Interest accrues on his loan at the rate of .58 per day. Exhibit H (L130 Screen).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 27th day of September 2001.

s/*Nicolas Navarro*
Nicolas Navarro
Senior Loan Analyst

Exhibit A 5/85 Loan Application in part

FEB. 1* 2001 2.**PM EDFUND POST-DEFAULT SERVI
916 526 7209

*** * * Application For**
CALIFORNIA GUARANTEED STUDENT LOAN
STUDENT AID COMMISSION
EDUCATIONAL LOAN PROGRAMS
SACRAMENTO, CALIFORNIA

FOR LENDER USE – LOAN IDENTIFICATION
✓

* * * TYPE OR PRINT ALL ENTRIES—
STUDENT COMPLETE PART 'A' ONLY

PART A STUDENT

1. SOCIAL SECURITY NO. * * *[SSN]
2. APPLICANT'S LAST NAME *EDWARDS*
   FIRST NAME *BRUCE* M.I. ___
3. BIRTHDATE mo/day/yr */*/*
4. PERMANENT HOME ADDRESS *1255 19TH #3*
   CITY *LONG BEACH* STATE *CA* ZIP CODE *90810*
5. (AC) TELEPHONE (*213*) *432-6398*
6. U.S. CITIZENSHIP (A) U.S. CITIZEN, NATIONAL OR RELATED STATUS ✓* * *
7. TOTAL NUMBER OF BORROWER'S DEPENDENTS *1*
   LIST AGES *20*

8. PERMANENT/LEGAL RESIDENCE STATE *CA*
   SINCE mo/yr *02/65*
9. I INTEND TO ENROLL AS A FULL-TIME STUDENT ✓***
10. MAJOR COURSE OF STUDY CODE * * * *5*
11. WHILE IN SCHOOL BORROWER INTENDS TO LIVE
    * * * OFF CAMPUS ✓
12. HAVE YOU EVER BEEN ENROLLED IN ANY SCHOOL BEYOND THE HIGH SCHOOL LEVEL PRIOR TO THE ACADEMIC YEAR FOR WHICH THIS LOAN IS REQUESTED? YES ✓* * *
13. LOAN AMOUNT REQUESTED *$2,500*
14. PERIOD OF LOAN FROM mo/yr *05/85* TO mo/yr *11/85*
15. HAVE YOU EVER DEFAULTED ON A GUARANTEED STUDENT LOAN, A PARENT LOAN OR AN AUXILIARY LOAN TO ASSIST STUDENTS? * * * NO ✓
16. DO YOU HAVE ANY OUTSTANDING STUDENT LOAN DEBTS? * * * NO ✓ * * *
17. REFERENCES * * *
    A ✓PARENT * * *
    Shirley Pugh
    915 Chestnut Ave. Long Beach/CA/90813
    (AC) *436-4523*
    B * * * ✓OTHER ADULT RELATIVE * * *
    Charlean Edwards
    #617 W. Spruce St. Compton/CA/90220
    (AC) *636-7442*
    C * * * ✓ OTHER ADULT RELATIVE * * *
    Dee Williams
    2300 Chestnut Long Beach/CA/90813
    (AC) *591-4544*
18. DRIVER'S LICENSE NO./
    STATE TEMPORARY ADDRESS * * *
    (A) *C2038101/CA*
    (B) ~~*3635 ATLANTIC LONG BEACH CA 90807*~~ *NONE*
19. MY SIGNATURE ON THIS APPLICATION CERTIFIES THAT I HAVE READ AND AGREED TO THE CONDITIONS AND AUTHORIZATIONS GIVEN (IN THE "STUDENT CER-TIFICATION" PRINTED ON THE REVERSE OF THIS APPLICATION.

SIGNATURE OF BORROWER s/*Bruce Edwards*
DATE SIGNED *5-6-85*

PART B SCHO

SCHOOL USE ONLY SEE SCHOOL INSTRUCTIONS FOR PART B ON REVERSE SIDE SCHOOL USE ONLY

20. NAME OF EDUCATIONAL INSTITUTION
TRAVEL & TRADE CAREER INSTITUTE
21. ADDRESS CITY STATE ZIP CODE 3635 Atlantic Ave., Long Beach, CA 90807
22. LOAN PERIOD mo/day/yr – mo/day/yr FROM 05/20/85 TO 11/22/85
23. GRADE LEVEL CODE NUMBER V1
24. ANTICIPATED COMPLETION DATE mo/yr 11/85
25. SCHOOL CODE 007926 26
(AC) TELEPHONE 213-426-8841
27. (A) DEPENDENCY STATUS * * * ✓ INDEPENDENT
27. (B) FAMILY ADJUSTED GROSS INCOME $5,000
28. ESTIMATED COST OF EDUCATION FOR LOAN PERIOD $ 7,283
29. (A) FINANCIAL AID FOR LOAN PERIOD $ -0-
29. (B) EXPECTED FAMILY CONTRIBUTION $ -0-
30. COST LESS AID (NET ITEM 28 minus Items 29(A) + 29(B)) $ 7,283
32.[SIC] MY SIGNATURE BELOW CERTIFIES THAT I HAVE READ AND AGREED TO THE CONDITIONS GIVEN IN THE "EDUCATIONAL INSTITUTION CERTIFICATION" PRINTED ON THE REVERSE OF THIS APPLICATION

[Petitioner's Note: signature / date & reverse side missing from all disclosed copies]

Exhibit B Note (set forth p. 133 supra)

Exhibit C 9/27/01 R107 (*see* p. 412 *infra*)

Exhibit D 9/27/01 L106 (*see* p. 413 *infra*)[3]

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[3] Mr. Navarro's version of the L109 did not include the 5/26/93 entry.

Exhibit E 9/27/01 L102 Collector Note Pad

[Note: head/foot repeated; same-date entries combined]

Page: 1 Document Name: untitled

(L102) COLLECTOR NOTE PAD ED9239

REGION: 09 ACCT OWNER: ED105 09/27/01

COLL NUM: 17:17[16]

ACCT NO: S***[SSN]

ACCT NAME: EDWARDS, BRUCE

ED BALANCE: 5,322.27 PROJ/ACT CA: 0.00

CA BALANCE: 5,322.27

Date	Source Code	Narrative
12/09/93	EA 789999	LC1 10:45 (gc) ph. res. 310-432-6398 LC1 10:46 T1 WR # LC1 10:46 3SKP skip trace accounts LC1 10:46 Account transferred via G.C. LC1 10:46 lr #457 1
11/03/94	EA 789999	VX1 4:36 ls #457
11/05/94	EA 789999	VX4 12:18 ls #472
11/29/94	EA 789999	VX5 12:28p ls #457
01/04/95	EA 789999	VX5 6:41p ls #457
02/08/95	EA 789999	TNC 4:51p (gc) ph. pos. 310-422-4230 TNC 4:51p Timed call back 02/15/95 04:54pm
03/21/95	EA 789999	VX1 9:36 ls #457 VX1 9:36 lr #459 1 VX1 9:36 3CRF CBR SCORING F sys lser 200 04/10/95
06/25/96	EA9999	note; recd ltr frm dtr rqsting pnotes per; dtrs rqst=MP DCS rec'd ltr from debtor; SFO pgs: 1

Date	Source Code	Narrative
06/26/96	EA9999	note; recd req for pnotes/ordered docs=RF req docs from client; pnotes for debtor/MW; pnote ordered/JN
06/27/96	EA9999	DCS rec'd ltr from debtor; SFO pgs:1
07/03/96	EA9999	req docs from client; requested notes...SW
07/11/96	EA9999	note; recd pnotes for dtr complete/MB
07/12/96	EA9999	docs rec'd from client; SFO pgs: 2
08/27/96	EA9999	note; db req for loan docs--CD
08/28/96	EA9999	note; recd req for pnotes/dox recd 7/12/96/; will resnd per CD req=RF DCS rec'd ltr from debtor; SFO pgs:1
08/30/96	EA9999	note; resent pnotes (G224) per CD req/ MB
01/24/97	EA9999	DCS rec'd ltr from debtor; SFO pgs:1
01/27/97	EA9999	note; per ltr recd 01-24 re-rqsting pnotes; and itmz to ref bck for verf =MP
01/31/97	EA9999	DCS rec'd ltr from debtor; SFO pgs:1
02/18/97	EA9999	DCS rec'd ltr from debtor; SFO pgs: 1; per ltr recd dtr is rqsting us to; cease and desist all coll on dbt =MP debtor,requests no calls at home debtor,requests no calls at work debtor,requests no mail at home debtor,requests no mail at address 2
10/16/97	ED9390	["]***["]received TOP hearing/review["]******["]
10/20/97	ED9264	["]****["] req copy of pn E Esguerra

Date	Source Code	Narrative
10/30/97	ED9206	rec'd TOP review, cust states he did not have a high diploma/GED and tht the sch sign his name
06/20/00	ED4246	req orig file, PCA cannot read pnote. M.Patterson/ASC
08/29/00	PIC596	MI-borr states in rather unclear terms that the debt is too old to be enforced and that he is disputing certif. for TOP; resp: gv authority for elimination of statute of limitations, gv authorit y for TOP and adv borr recv'd N18 (borr had includ a copy of the N18 with his ltr), refer to PIC phones. LBrooks
10/03/00	GD IRS635	*TOP*Bruce & Dani B Edwards 2000
10/30/00	EA9999	T/R tt kid sd he is not thre E.Davis T/R disc dscted 303 400 3485 E.Davis T/POE tt E.Davis T/POE tt wmn sd no in to vrfy E.Davis
11/06/00	EA9999	co rr borr snt ltr of disp. C.Burke
11/07/00	EA9999	corr update corr to cltr T.Domes
01/23/01	ED9291	per Vanessa Santos/OGC/HQ req recall acct fr AG524. Bwr filed suit against the dept. JLiu
	ED9354	Branch Chief, R. Robinson, instructed me to mail CB Report to Vanessa Santos, OGC, at (202) 401-9533. This was completed this afternoon./E. Cruz
09/27/01	ED9239	
* * * Date: 9/27/01		Time: 3:17:47 [- 3:19:09] PM

Exhibit F 9/27/01 R103 Account Trans.

Page: 1 Document Name: untitled
(R103) ACCOUNT TRANSACTION SCREEN ED9239
REGION: 09 ACCT OWNER: ED105 09/27/01
COLL NUM: 18:23
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
DATA HAS BEEN ARCHIVED: (___)
AMESTY: N
ED BALANCE: 5,322.27
PROJ/ACT CA: 0.00
CA BALANCE: 5,322.27
TOTAL PMT: 234.32
NET ADJ TRANS: 0.00
VOLNTRY PMT: 0.00
NET OTHER TRANS: 2,673.55

PAGE 1 OF 1

	Effective Date	Total Payment	Tran TP RS	Instrument Number	Seq Number
[A]	09/22/00	234.32	RG FO	000000000000	001136
[B]	09/22/00	1,551.85-	IA	000000000000	000000
[C]	09/22/00	9.65-	FF	000000000000	000000
[D]	06/14/93	1,112.05-	IA	0000000000	000130

	IN TP	Orig-B. Postcl	Src Nbr	Cred Site	Posting Date	S
[A]		TOP	TOP		10/02/00	-
[B]		POS	POS		10/02/00	-
[C]		POS	POS		10/02/00	-
[D]		IAP	IAP	ED	06/26/93	-

PF13-RI01 14-R1O2 15-R103 16-R104 17-R105 18-R106
19-R107 20-R108 21-R109
Date: 9/27/01
Time: 4:24:58 PM

Exhibit G 10/1/01 R101 Research Account

10/01/2001 10:15 FAX 4154877777 US DEPT ED.LIT BRNCH-SF 002
Page: 1 Document Name: untitled
(R101) RESEARCH ACCOUNT SCREEN ED9239
REGION: 09 ACCT OWNER: ED105 10/01/01
AWG FLAG: N 12:09
PRIOR LOCATION: PRIOR 1: 616 PRIOR 2: 056
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
PREV ACCT NO: ___ PREV NAME: ___
STREET: 1001 EMPORIA ST
CITY: AURORA STATE: CO ZIP: 80010
BIRTHDATE: * * *
DAY PHONE: ( ) - NIGHT PHONE: ( ) -
LAST PMT AMOUNT: .00 LAST PMT DATE: ___
TOP STAT: 02-2
---DEBTS--- PAGE 1 OF 1
DEBT ID G199309030022801

LOC CODE ED105	TOTALS
PROJ/ACT CA 1,331.15	1,331.15
CA BALANCE: 6,655.76	6,655.76
CO MKR ___	
PENALTY ___	
ADMIN ___	
FEES ___	
PRINCIPAL 2,666.94	2,666.94
INTEREST 2,657.67	2,657.67
ED BALANCE 5,324.61	5,324.61

PF13-RI01 14-R1O2 15-R103 16-R104 17-R105 18-R106
19-R107 20-R108 21-R109 Date: 10/1/01
Time: 10:10:12 AM

Exhibit H 10/1/01 L130 Rehab. & Consol.

10/01/2001 10:15 FAX 4154877777 US DEPT ED.LIT BRNCH-SF 003
Page: 1 Document Name: untitled 10/01/01
(L130) REHABILITATION AND ED9239
CONSOLIDATION SCREEN

ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
PAYOFF DATE: 10/31/01
ACTION: ___
#PAYMENTS: 00
STATUS: ___
LETTER STATUS: ___

--PROJECTED TOTAL FOR ALL SELECTED DEBTS--
PRINCIPAL: 2,666.94
INTEREST: 2,675.19
TOTAL: 5,342.13

FEES: ___
COLL COSTS: ___

--PROJECTED TOTAL BY DEBT--

PAGE 1 OF 1

G/D DATE 06/21/85

Y DEBT-ID = G199309030022801
TYPE = STAF SUB = *
SID = 007926
JUDGE = N
PRINCIPAL: 2,666.94
INTEREST: 2,675.19
TOTAL: 5,342.13
FEES: ___
COLL COSTS: ___
INT RATE = 8.0%
INTEREST PER DAY = .58
W/D DATE = 12/13/85
PF13-LI01 14-L1O2 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109 22-L1
Date: 10/1/01
Time: 10:10:21 AM

Exhibit 2 9/28/01 Rasca Declaration

09/28/01 18:25 FAX 2024015391 DEPT ED OGC 002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Number: 0l-B-0036
BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

DECLARATION OF GLENDA RASCA

JOB RESPONSIBILITY AND DUTIES

1. I am the Associate Director at the Travel and Trade Career Institute ("TTCI") located at 3635 Atlantic Avenue, Long Beach, California. I have held this position since February 1999. Prior to holding the Asso ciate Director position, I was a JTPA Coordinator and Student Services Assistant at TTCI from February 1998 until February 1999.
2. As the Associate Director, my duties and responsibilities include overseeing financial aid office procedures as well as all other departments.
3. In my capacity as the Associate Director, I have knowledge of the financial aid procedures and documents used at TTCI as well as the attendance procedures at TTCI. I am also familiar with the enrollment contracts that students sign upon entering TTCI.

EXPLANATION OF BRUCE EDWARDS SCHOOL AND FINANCIAL AID RECORDS

4. On May 7, 1985, Mr. Edwards signed an enrollment contract with TTCI for the Travel Course. Exhibit A. The cost of this course at the time was $3,755.00. Accordingto Mr. Edward's contract, he made an initial deposit of $120.00 and was going to obtain financing for the remaining $3,635.00 due on his contract.
5. Prior to August, 1985, TTCI received $2,459.58 from student loans for payment of Mr. Edward's tuition and fees. Exhibit B. On August 14, 1985, Mr. Edwards

signed a for a Pell Grant check in the amount of $975.00, which was applied to the cost of his tuition and fees. Ana Morton verified Mr. Edward's units and progress on the receipt for this check. Ms. Morton was in the financial aid department of TTCI. The check had the words "THIS CHECK IS FOR SCHOOL" printed on the front of it.

6. On October 3, 1985, Mr. Edwards signed for a Pell Grant check in the amount of $656.00. Exhibit C. Ana Morton verified Mr. Edward's units and progress on the receipt for this check. The check had the words "THIS CHECK IS FOR STUDENT" written on the front of it.
7. Also on October 3, 1985, Mr. Edwards signed a for a Pell Grant check in the amount of $319.00, which was applied to the cost of his tuition and fees. Exhibit D. Ana Morton verified the units and his progress on the receipt for this check. The check had the words "THIS CHECK IS FOR SCHOOL" printed on the front of it.
8. Beginning on May 20, 1985 until July 12, 1985, Mr. Edwards took an Orientation Class at 1:00 p.m. The Orientation Class consisted of eight modules, which Mr. Edwards satisfactorily completed. He received a 95% grade point average in this class. Exhibit E. Thereafter, he attended a Passenger Class until the end of September 1985. This class consisted of sessions regarding airline ticketing, Amtrack, Agency Sales, among other things. Mr. Edwards satisfactorily completed most of these sessions.
9. TTCI has attendance records for Mr. Edward's starting on May 20, 1985 until November 11, 1985. Attendance was recorded by the instructors and entered into a computerized attendance system. Exhibits F. The record indicates the class attended (OPM is the Orientation class and PPM is the Passenger class), the number of hours attended, whether Mr. Edwards was late to class, if he left early, and if he did not attend. The initials NT stand for 'no test', NC stands for 'No Call'; ANC stands for 'Absent No Call'. The total

number of hours that Mr. Edwards attended between June and September was 339.75.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the *28th* day of September 2001.

s/*GRasca*
Glenda Rasca
TTCI

Exhibit A 6/85 TTCI Contract in part[4]

10/01/01 10:34 FAX 2024015391 DEPT ED OGC 006
R. Wolfe *Afternoon Travel start 5-20-85*
TRAVEL AND TRADE CAREER INSTITUTE
3635 Atlantic Avenue N
Long Beach, CA 90807 ACCT. NO. [blank]
(213) 426-8841

RETAIL INSTALLMENT CONTRACT/
STUDENT ENROLLMENT AGREEMENT

This contract and all attached sheets are one agreement and all the information, clauses and convenants[sic] in this contract are incorporated in the attached sheets as though set out in full therein, however, if any clause, disclosure or covenant in this contract shall differ or be in conflict with any and all attached sheet or sheets, this contract and its covenants shall govern.

The undersigned school, college or university, hereinafter known as Seller, hereby sells and the undersigned student, hereinafter known as Buyer, or you, hereby purchases, subject to the terms and conditions herein set out, the following course(s) and materials:

TTCI – Travel Course course(s) as described in the school's catalog.
Buyer's Name (Mr.) *** *Bruce Edwards*
starting *5-20* 19*85* to be given at the following location

---

[4] Set forth here as legibly disclosed; *see* #146 Transcript of #74 Motion to Compel Hearing at 7:10-12 (Pet. App. 64) "[10] And so we made a request from TTCI for legible [11] copies, and they --they gave us legible copies which we [12] have given to Mr. Edwards. ..."

3635 Atlantic Long Beach Area (*213*) Phone *426-8841*.

You understand that you shall attend the Morn. ___ Afternoon ___ Day ___ Eve. ___ session for ___ consecutive weeks/months. Total number of hours ___ Total number of Semester/Quarter Units ___.

ANNUAL PERCENTAGE RATE: The cost of your credit as yearly rate. *-0-*

FINANCE CHARGE The dollar amount the credit will cost you. $ *-0-*

AMOUNT FINANCED The amount of credit provided to you on your behalf $ *$3635.00*

TOTALOF PAYMENTS The amount you will have paid alter you have made all payments as scheduled. $ *3755.00*

TOTALSALES PRICE The total cost of your purchase on credit, Including your down payment and/or registration fee. $ *3755.00*

YOUR PAYMENT SCHEDULE WILL BE:

Number of payments *1*

Amount of each payment $ *3755.00*

When payments are due *5-20-85*

Monthly ___ Beginning ___ 19 ___ and on the same day of each month weekly ___ thereafter until paid in full.

If Buyer should need additional training and/or extended training, the Buyer will be charged at the rate of $___ per hour/week/month (Initial). You will be required to maintain a passing grade of ___% at all times.

THE POLICY OF THE SCHOOL IS: all tuition and fees are due and payable on first day of attendance.

1. Payments will be made at the office of the Seller or Seller's assignee.
2. In event of default of Buyer in the payment of any installment, if such default shall continue for a period of 10 days, Seller may collect a delinquency charge not exceeding 5% of such installment or $5.00, whichever is less, minimum $1.00 provided that such delinquency charge may be collected not more than once on any installment.

3. If Buyer defaults in the performance of his/her obligation hereunder, including the making of any payment provided for herein when due and payable, the Seller, at his/her option and without notice to Buyer, may declare the whole amount unpaid hereunder immediately due and payable.
4. In the event that the holder of this contract prevails in any action to enforce the terms or provisions hereof, Buyer agrees to pay reasonable attorney fees and actual court costs. Buyer warrants that all of the statements made in the Buyer's statement are true and correct.
5. Buyer is entitled to pay in advance the remaining unpaid balance due hereunder and receive a pro rate refund of the FINANCE CHARGE computed in accordance with the actuarial method.

This contract embodies the whole agreement between these parties, and the Buyer agrees that no representation, warranty or guaranty has been made to him/her which is not expressly set forth herein, and that all the benefits hereof accruing to the Seller, shall also accrue to Seller's assignee, or any subsequent assignee. No transfer, renewal, extension or assignment of this contract shall release Buyer from his/her obligation hereunder.

Time is of the essence of this contract, and all terms and designations herein contained shall be deemed to have the number, gender and entity, applicable to parties who execute this contract. The term Seller shall be deemed to include any assignee or subsequent holder of this contract.

If any part or provision hereof is contrary to the provisions of law in any state wherein this contract may be executed, the remaining provisions shall be binding and effective nevertheless.

NOTICE TO BUYER: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) You can repay the full amount due under this agreement at anytime and, obtain a partial

refund of the finance charge if it is $1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you desire to payoff in advance the full amount due, the amount of the refund you are entitle to, if any, will be furnished upon request. (5) This agreement is not binding until accepted by Seller.

ITEMIZATION OF THE AMOUNT FINANCED

100% of tuition due upon acceptance to TTCI.

1. CASH PRICE	a. Tuition	$ *3755.00*
	b. Registration Fee	$ ___
	c. Incidental Fees	$___
	d. Supplies	$ ___
	e. Books	$ ___
	f. ___ % Sales Tax	$ ___
2. TOTAL CASH PRICE		$ *3755.00*
3. LESS DEDUCTIONS	a. Registration Fee	$ ___
	b. *Deposit*	$ *120.00*
	c. _____	$ ___
	d. Other	$ ___
4. TOTAL DEDUCTIONS		$(*120.00*)
5. UNPAID BALANCE OF CASH PRICE		$ *3635.00*
6. AMOUNT FINANCED		$ *3635.00*

The entire amount financed will be applied to your accounts.

I hereby guarantee payment of all obligations of the Buyer (Student) hereunder to the Seller (School) or its assignee. * * *[guarantor blanks]

By signing below, Buyer (Student) acknowledges a receipt of a complete and true copy of this Retail Installment Contract and agrees to all the terms and conditions including those set forth on the reverse side.

Buyer Sign Here s/*Bruce Edwards* Date *5-7-85*

Print Name *BRUCE EDWARDS* Address *1255 19th #3*

City *LONG BEACH* State *CA* Zip *90810*

Home Tel. (*213*) *432-6348* Work Tel. (*213*) *424-3543*

Social Security No. * * *[SSN]

Seller *Travel and Trade Career Ins* By *R. Wolfe*

Address *3635 Atlantic Ave.* Title *Adm. Rep.* Date *5-6-85*

City *Long Beach* State *CA* Zip *90807*

NOTICE:

See reverse side for additional terms of contract.

WARNING: COPYRIGHT © 1984 BY HAROLD A. HAASE, PROTECTED BY U.S. COPYRIGHT LAW (TITLE 17 UNITED STATES CODE 506). UNAUTHORIZED REPORDUCTION AND/OR SALES MAY RESULT IN IMPRISONMENT OF UP TO ONE YEAR AND FINES OF UP TO $10,000. COPYRIGHT INFRINGERS MAY ALSO BE SUBJECT TO CIVIL LIABILITY.

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* * *[reverse side/attachments not disclosed] **{US000007}**

Exhibit B 8/13/85 TTCI check #4086 face[5]

10/01/01 10:34 FAX 2024015391 DEPT ED OGC 008

Travel and Trade Career Institute
Student Assistance Account
Federal Funds
3635 Atlantic Ave.
Long Beach, CA 90807

United California Bank
Bixby Knolls Office
4210 Long Beach Blvd.
Long Beach. Ca 90807

16-21/132 1220 CHECK **No 4086**

DATE AUG 13, 1985 AMOUNT $975.00

PAY 975 DOLLARS AND 0 CENTS TO THE ORDER OF
TRAVEL AND TRADE CAREER INSTITUTE
ACCOUNT OF BRUCE EDWARDS * * *[SSN]
TH1S CHECK IS FOR SCHOOL PELL: 975

NOT-NEGOTIABLE s/~~*Rodger Erickson*~~

"004086":122000218:13293208 2"11 Authorized Signature

Travel and Trade Career Institute **CHECK No 4086**
BRUCE EDWARDS * * *[SSN] 08/13/85 CHECK # 4086

RECEIVABLES	TUITION & FEES	3755.00
	PRIOR PAYMENTS	2459.58
	BALANCE OWED	1295.42
	THIS CHECK	975.00
	NEW BALANCE	320.42

[5] Set forth here as legibly disclosed; *see* #146 Transcript of #74 Motion to Compel Hearing at 7:10-12 (Pet. App. 64)

FINANCIAL AID ADVANCES

	NDSL	SEOG	CWS	PELL	TOTAL
PRIOR CHECKS	0.00	0.00	0.00	0.00	0.00
THIS CHECK	0.00	0.00	0.00	975.00	975.00
NEW TOTAL	0.00	0.00	0.00	975.00	975.00

PRIOR PAID TO SCHOOL: 2339.58

PAID TO STUDENT: 0

THIS CHECK IS FOR $975.00 FOR SCHOOL

RECEIPTED BY x[allegedly s/]*Bruce Edwards*

DATE *8-14*-85 STUDENT'S SIGNATURE

UNITS COMPLETED 0.00 AS OF 0/0

UNITS VERIFIED BY *AM*

ADDRESS VERIFIED BY *AM*

SATISFACTORY PROGRESS VERIFED BY *AM*

{US000004}

Exhibit C 9/24/05 TTCI check #4136 face[6]

10/01/01 10:35 FAX 2024015391 DEPT ED OGC 010

Travel and Trade Career Institute
Student Assistance Account
Federal Funds
3635 Atlantic Ave.
Long Beach, CA 90807

United California Bank
Bixby Knolls Office
4210 Long Beach Blvd.
Long Beach. Ca 90807

16-21/132 1220 CHECK **No 4136**

DATE SEPT 24, 1985 AMOUNT $656.00

PAY 656 DOLLARS AND 0 CENTS TO THE ORDER OF

BRUCE EDWARDS * * *[SSN]

1255 19TH ST 3 LONG BEACH, CALIF 90810

MUST HAVE COMPLETED 18 UNITS FOR THIS CHECK. TH1S CHECK IS FOR STUDENT PELL: 656

NOT-NEGOTIABLE s/~~*Rodger Erickson*~~

"004136":122000218:13293208 2"11 Authorized Signature

BRUCE EDWARDS * * *[SSN] **CHECK No 4136**

09/24/85 CHECK # 4136

---

[6] Set forth here as legibly disclosed; *see* #146 Transcript of #74 Motion to Compel Hearing at 7:10-12 (Pet. App. 64)

RECEIVABLES	TUITION & FEES	3755.00
	PRIOR PAYMENTS	3434.58
	BALANCE OWED	320.42
	THIS CHECK	0.00
	NEW BALANCE	320.42

FINANCIAL AID ADVANCES

	NDSL	SEOG	CWS	PELL	TOTAL
PRIOR CHECKS	0.00	0.00	0.00	975.00	975.00
THIS CHECK	0.00	0.00	0.00	656.00	656.00
NEW TOTAL	0.00	0.00	0.00	1631.00	1631.00

PRIOR PAID TO SCHOOL: 3314.58

PAID TO STUDENT: 0

THIS CHECK IS FOR $656.00 FOR STUDENT

RECEIPTED BY *x*[allegedly s/]*Bruce Edwads*[sic]

DATE *10/3/85* STUDENT'S SIGNATURE

UNITS COMPLETED 0.00 AS OF 0/0

UNITS VERIFIED BY *AM*

ADDRESS VERIFIED BY *AM*

SATISFACTORY PROGRESS VERIFED BY *AM*

{US000005}

Exhibit D 9/24/85 TTCI check #4137 face[7]

10/01/01 10:35 FAX 2024015391 DEPT ED OGC 012

Travel and Trade Career Institute
Student Assistance Account
Federal Funds
3635 Atlantic Ave.
Long Beach, CA 90807

United California Bank
Bixby Knolls Office
4210 Long Beach Blvd.
Long Beach. Ca 90807

16-21/132 1220 CHECK **No 4137**

DATE SEPT 24, 1985 AMOUNT $319.00

PAY 319 DOLLARS AND 0 CENTS TO THE ORDER OF TRAVEL AND TRADE CAREER INSTITUTE ACCOUNT OF BRUCE EDWARDS * * *[SSN] MUST HAVE COMPLETED 18 UNITS FOR THIS CHECK. TH1S CHECK IS FOR SCHOOL PELL: 319

NOT-NEGOTIABLE s/~~*Rodger Erickson*~~

---

[7] Set forth here as legibly disclosed; *see* #146 Transcript of #74 Motion to Compel Hearing at 7:10-12 (Pet. App. 64)

"004137":122000218:13293208 2"11 Authorized Signature

Travel and Trade Career Institute **CHECK No 4137**

BRUCE EDWARDS * * *[SSN] 08/13/85 CHECK # 4137

RECEIVABLES	TUITION & FEES	3755.00
	PRIOR PAYMENTS	3434.58
	BALANCE OWED	320.42
	THIS CHECK	319.00
	NEW BALANCE	1.42

FINANCIAL AID ADVANCES

	NDSL	SEOG	CWS	PELL	TOTAL
PRIOR CHECKS	0.00	0.00	0.00	1631.00	1631.00
THIS CHECK	0.00	0.00	0.00	319.00	319.00
NEW TOTAL	0.00	0.00	0.00	1950.00	1950.00

PRIOR PAID TO SCHOOL: 3314.58

PAID TO STUDENT: 656

THIS CHECK IS FOR $319.00 FOR SCHOOL

RECEIPTED BY x[allegedly s/]*Bruce Edwards*

DATE *10-3-85* STUDENT'S SIGNATURE

UNITS COMPLETED 0.00 AS OF 0/0

UNITS VERIFIED BY *AM*

ADDRESS VERIFIED BY *AM*

SATISFACTORY PROGRESS VERIFED BY *AM*

{US000006}

Exhibit E "Student Record Card"[8]

10/01/01 10:35 FAX 2024015391 DEPT ED OGC 014

TRAVEL AND TRADE CAREER INSTITUTE

STUDENT RECORD CARD

EDWARDS	BRUCE	20	XA3102
Last Name	First Name	Age	Contract

1255 19th ST. *disconnected*

LONG BEACH, CA 90810 (213) ~~436-4523~~ *599-1423*

Address	Home Phone	Work Phone
BOB BW	119	11-15-85
Rehab Counselor/Rep	Phone #	Score	Grad Date

[8] Set forth here as legibly disclosed; *see* #146 Transcript of #74 Motion to Compel Hearing at 7:10-12 (Pet. App. 64)

Orientation Class 1:00 PM

Start Date 05-20-85 Transfer Date 07-12-85

Mod 1. Basics 100% 6/21/85
Mod 2. Reference Guides 99% 6/28/85
Mod 3. IATA Area, I #1 94% + 4 7/3/85
Mod 4. IATA Area, I #2 90% 7/12/85
Mod 5. IATA Area, II #1 95% 5/24/85
Mod 6. IATA Area, II #2 98% + 4 5/31/85
Mod 7. IATA Area III #1 88% 6/7/85
Mod 8. Grooming, Resumes, Interviewing, IATA III #2 100% 6/14/85

Grade Point Average In Orientation Class 95%

Passenger Class – *PM*

Transfer Date *7/15/85* Grad Date ___

Agency Ref. Matl I N/G Airline Tckg III 87% 8/16/85
Agency Ref. Matl II N/G Agency Sales 77% 8/23/85
Intl Travel I ___ Agency Ref Matl III
Intl Travel II ___ Use In Sales 8/30/85
Ind. Terms/Doc Ins/Cars/Hotel 85% Cruises 90% 9/6/85
Intro Dom IT's N/G 85% Amtrack/USA 93% 9/13/85
Intro Intl IT's N/G 85% Pkg Tours Dom. Intl 88% 9/20/85
Airline Tckg I 94% 8/2/85 Intl III/Mex/Carribean
Airline Tckg II 85% 8/9/95 N/G 88% 9/27/85
Hawaii Sales N/G Canada/Alaska N/G

Grade Point Average In Passenger Class 87%

Foreign Trade And Transportation Class ___

Start Date ___ Grad Date___

Introduction/Terms ___ US Customs ___
Export Control I ___ US Customs ___
Export Control II ___ Ocean Freight ___
Int. Documentation ___ Ocean Freight ___
For. Documentation ___ Ocean Freight ___
For. Documentation ___ Air Freight ___
Intl Banking ___ Air Freight ___
US Customs ___ Air Freight ___
US Customs ___ Air Freight ___

Grade Point Average In Cargo Class

{US000008}

Exhibit F "Computerized Attendance"

10/01/01 10:30 FAX 2024015391 DEPT ED OGC 016[-019]

[XA3102]				06/03/85	4.75	
XA3102				06/04/85	4.75	
XA3102				06/05/85	4.75	EL1.25
XA3102				06/06/85	4.00	NT
XA3102				06/07/85	4.75	
XA3102		Edwards	Bruce	06/10/85	4.75	
XA3102	OPM	Edwards	Bruce	06/11/85	4.75	
XA3102	OPM	Edwards	Bruce	06/12/85	4.75	
XA3102	OPM	Edwards	Bruce	06/13/85	4.75	
XA3102	OPM	Edwards	Bruce	06/14/85	4.75	
XA3102	OPM	Edwards	Bruce	06/17/85	4.75	
XA3102	OPM	Edwards	Bruce	06/18/85	4.00	NT
XA3102	OPM	Edwards	Bruce	06/19/85	0.00	NC
XA3102	OPM	Edwards	Bruce	06/20/85	0.00	NC
XA3102	OPM	Edwards	Bruce	06/21/85	4.75	
XA3102	OPM	Edwards	Bruce	06/24/85	4.75	
XA3102	OPM	Edwards	Bruce	06/25/85	4.75	
XA3102	OPM	Edwards	Bruce	06/27/85	4.75	
XA3102	OPM	Edwards	Bruce	06/27/85	4.75	
XA3102	OPM	Edwards	Bruce	06/28/85	4.75	
				TOTAL:		88.75

OPM	07/01/85	4.75	
OPM	07/02/85	4.75	
OPM	07/03/85	4.75	
OPM	07/04/85	4.75	H
OPM	07/05/85	4.75	H
OPM	07/08/85	4.75	
OPM	07/09/85	4.75	
OPM	07/10/85	4.75	
OPM	07/11/85	4.75	
OPM	07/12/85	4.75	
PPM	07/15/85	3.50	LATE
PPM	07/16/85	4.75	
PPM	07/17/85	4.75	
PPM	07/18/85	4.75	
PPM	07/19/85	4.75	

PPM	07/22/85	4.75	
PPM	07/23/85	4.75	
PPM	07/24/85	4.75	
PPM	07/25/85	4.75	
PPM	07/26/85	4.75	
PPM	07/29/85	4.50	LATE
PPM	07/30/85	0.00	NC
PPM	07/31/85	4.75	

XA3102 Edwards Bruce Total for July: 103.00
Total for June, and, July: 187.00
{US000010}

PPM	09/02/85	4.75	H
PPM	09/03/85	4.75	
PPM	09/04/85	4.50	LATE
PPM	09/05/85	4.75	
PPM	09/06/85	4.75	
PPM	09/09/85	0.00	ANC
PPM	09/10/85	4.75	
PPM	09/11/85	4.75	
PPM	09/12/85	4.75	
PPM	09/13/85	4.00	NT
PPM	09/16/85	4.75	
PPM	09/17/85	0.00	ANC
PPM	09/18/85	4.75	
PPM	09/19/85	0.00	ANC
PPM	09/20/85	4.75	
PPM	09/23/85	0.00	ANC
PPM	09/24/85	0.00	ANC
PPM	09/25/85	4.00	NT
PPM	09/26/85	0.00	ANC
PPM	09/27/85	4.90	NT
PPM	09/30/85	0.00	ANC/ILL

XA3102 Edwards Bruce Total for September: 64.00
Total for June [&] July [&] August [&] September: 339.75
{US000011}

Contract	Date	Attend	Detail	LName	FName	Class
XA3102	10/31/85	4.75		Edwards	Bruce	
XA3102	10/31/85	4.75		Edwards	Bruce	OPM
XA3102	06/12/85	4.75		Edwards	Bruce	OPM
XA3102	06/13/85	4.75		Edwards	Bruce	OPM
XA3102	06/14/85	4.75		Edwards	Bruce	OPM
XA3102	06/17/85	4.75		Edwards	Bruce	OPM
XA3102	16/18/85	4.00	NT	Edwards	Bruce	OPM
XA3102	06/19/85	0.00	NC	Edwards	Bruce	OPM
XA3102	06/20/85	0.00	NC	Edwards	Bruce	OPM
XA3102	06/21/85	4.75		Edwards	Bruce	OPM
XA3102	06/24/85	4.75		Edwards	Bruce	OPM
XA3102	06/25/85	4.75		Edwards	Bruce	OPM
XA3102	06/26/85	4.75		Edwards	Bruce	OPM
XA3102	06/27/85	4.75		Edwards	Bruce	OPM
XA3102	06/28/85	4.75		Edwards	Bruce	OPM
XA3102	07/01/85	4.75		Edwards	Bruce	OPM
XA3102	07/02/85	4.75		Edwards	Bruce	OPM
XA3102	07/03/85	4.75		Edwards	Bruce	OPM
XA3102	07/04/85	4.75	H	Edwards	Bruce	OPM
XA3102	07/05/85	4.75	H	Edwards	Bruce	OPM
XA3102	07/08/85	4.75		Edwards	Bruce	OPM
XA3102	07/09/85	4.75		Edwards	Bruce	OPM
XA3102	07/10/85	4.75		Edwards	Bruce	OPM
XA3102	07/11/85	4.75		Edwards	Bruce	OPM
XA3102	07/12/85	4.75		Edwards	Bruce	OPM
XA3102	07/15/85	3.50	LATE	Edwards	Bruce	PPM
XA3102	07/16/85	4.75		Edwards	Bruce	PPM
XA3102	07/17/85	4.75		Edwards	Bruce	PPM
XA3102	07/18/85	4.75		Edwards	Bruce	PPM
XA3102	07/19/85	4.75		Edwards	Bruce	PPM
XA3102	07/22/85	4.75		Edwards	Bruce	PPM
XA3102	07/23/85	4.75		Edwards	Bruce	PPM
XA3102	07/24/85	4.75		Edwards	Bruce	PPM
XA3102	07/25/85	4.75		Edwards	Bruce	PPM
XA3102	07/26/85	4.75		Edwards	Bruce	PPM
XA3102	07/29/85	4.50	LATE	Edwards	Bruce	PPM
XA3102	07/30/85	0.00	NC	Edwards	Bruce	PPM
XA3102	07/31/85	4.75		Edwards	Bruce	PPM

XA3102	08/01/85	4.75		Edwards	Bruce	PPM
XA3102	08/02/85	4.75	PAM	Edwards	Bruce	PPM
XA3102	08/05/85	4.50	LATE	Edwards	Bruce	PPM
XA3102	08/06/85	4.25	LATE	Edwards	Bruce	PPM
XA3102	08/07/85	4.75		Edwards	Bruce	PPM
XA3102	08/08/85	4.50	LATE	Edwards	Bruce	PPM
XA3102	08/09/85	3.50	LATE	Edwards	Bruce	PPM
XA3102	08/12/85	3.75	LATE	Edwards	Bruce	PPM
XA3102	08/13/85	4.75		Edwards	Bruce	PPM
XA3102	08/14/85	3.25	LATE	Edwards	Bruce	PPM
XA3102	08/15/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	08/16/85	4.75		Edwards	Bruce	PPM
XA3102	08/19/85	4.75		Edwards	Bruce	PPM
XA3102	08/20/85	4.75		Edwards	Bruce	PPM
XA3102	08/21/85	4.75		Edwards	Bruce	PPM
XA3102	08/22/85	4.75		Edwards	Bruce	PPM
XA3102	08/23/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	08/26/85	4.00	NT	Edwards	Bruce	PPM
XA3102	08/27/85	4.00	NT	Edwards	Bruce	PPM
XA3102	08/28/85	4.75		Edwards	Bruce	PPM
XA3102	08/29/85	4.75		Edwards	Bruce	PPM
XA3102	08/30/85	4.75		Edwards	Bruce	PPM
XA3102	09/02/85	4.75	H	Edwards	Bruce	PPM
XA3102	09/03/85	4.75		Edwards	Bruce	PPM
XA3102	09/04/85	4.50	LATE	Edwards	Bruce	PPM
XA3102	09/05/85	4.75		Edwards	Bruce	PPM

{US000012}

XA3102	09/09/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	09/10/85	4.75		Edwards	Bruce	PPM
XA3102	09/11/85	4.75		Edwards	Bruce	PPM
XA3102	09/12/85	4.75		Edwards	Bruce	PPM
XA3102	09/13/85	4.00	NT	Edwards	Bruce	PPM
XA3102	09/16/85	4.75		Edwards	Bruce	PPM
XA3102	09/17/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	09/18/85	4.75		Edwards	Bruce	PPM
XA3102	09/19/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	09/20/85	4.75		Edwards	Bruce	PPM

XA3102	09/23/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	09/24/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	09/25/85	4.00	NT	Edwards	Bruce	PPM
XA3102	09/26/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	09/27/85	4.00	NT	Edwards	Bruce	PPM
XA3102	09/30/85	0.00	ANC/ILL	Edwards	Bruce	PPM
XA3102	10/01/85	3.75	LATE	Edwards	Bruce	PPM
XA3102	10/02/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/03/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/04/85	4.75		Edwards	Bruce	PPM
XA3102	10/07/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/08/85	2.50	Late/Left	Edwards	Bruce	PPM
XA3102	10/09/85	4.75		Edwards	Bruce	PPM
XA3102	10/11/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/10/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/14/85	4.75	H	Edwards	Bruce	PPM
XA3102	10/15/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/16/85	4.75		Edwards	Bruce	PPM
XA3102	10/17/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/18/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/21/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/22/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/23/85	4.75		Edwards	Bruce	PPM
XA3102	10/24/85	4.75		Edwards	Bruce	PPM
XA3102	10/25/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/28/85	4.00	NT	Edwards	Bruce	PPM
XA3102	10/29/85	4.75		Edwards	Bruce	PPM
XA3102	10/30/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	10/31/85	4.75		Edwards	Bruce	PPM
XA3102	11/01/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	11/04/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	11/05/85	4.75		Edwards	Bruce	PPM
XA3102	11/06/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	11/07/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	11/08/85	0.00	ANC	Edwards	Bruce	PPM
XA3102	11/11/85	4.75	H	Edwards	Bruce	PPM

{US000013}

(2)

Supreme Court, U.S.
FILED
041290 DEC 20 2004
OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT of the UNITED STATES

BRUCE EDWARDS,
Petitioner-Appellant-Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Respondent-Appellee-Defendant.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI
APPENDIX (CONTINUED)

BRUCE EDWARDS
Petitioner, pro se
1001 Emporia Street
Aurora, Colorado 80010-3825
(303) 341-9433
(non-published, home)
2 of 2

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#43 Motion (compel disclosures) 10/3/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT-3 2001 James R. Manspeaker Clerk s/KS}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Motion for Production of Complete and Legible Documents Presented as Defendant's Rule 26(A[Sic])(1)(B)A & B Exhibits

Plaintiff pro se Bruce Edwards hereby moves to compel disclosure of the documents identified in paragraphs 6-9 herein, pursuant to Rule 37 of Federal Rules of Civil Procedure (FRCP), by this Motion for Production of Complete and Legible Documents Presented as Defendant's Rule 26(a)(1)(B)A & B Exhibits, for the reasons described below.

1. On June 29, 2001, Plaintiff filed a Motion and Brief to Extend Leave to Amend the Complaint with three enclosures. Enclosure 2 was comprised of the Originals of 14 Defendant Initial Disclosures—13 items from school, TTCI and 1 item from state guarantor, CSAC; these were consecutively numbered by Defendant as US000001-14 on their faces. Plaintiff's brief, particularly in the last paragraph on page 8 and all of page 9, noted the inadequacies of those originals as disclosed by Defendant, described the difficulty in working with them, and sought direction to obtain production of documents supporting Defendant's claim against Plaintiff in reasonable condition and completeness, so that Plaintiff could adequately address Defendant's foundation for the actions resulting in Plaintiff's cause of action when amending the Complaint.

2. For comparison of legibility with the original US000003 of Enclosure 2 referenced immediately above,

Plaintiff supplied the original of the first legible copy of the second page of the promissory note that Plaintiff ever received from Defendant, as the third page of Plaintiff's Enclosure 1 with the 6/29/01 Brief and Motion to Extend Leave to Amend Complaint.

3. On July 27, 2001, Plaintiff served Defendant the enclosed Requests for Documents and Complete/Legible Initial Disclosure; on its first of seven pages, this request identifies, by Defendant's assigned number on each paper, as incomplete or illegible "Defendant U.S.Department of Education's Initial Disclosures" §(a)(1)(B)A Exhibits 1 through 7 inclusive (except for Exhibit 2, which had recently been supplied to Plaintiff in reasonably legible format).

4. On August 27, 2001, Defense counsel Peter J. Krumholz initiated telephone contact with Plaintiff to seek a revision of Plaintiffs second set of interrogatories under FRCP 33, at which time the parties agreed to an extension until 9/4/01 for response to such amended interrogatories; the parties subsequently teleconferenced and agreed to an extension until 9/7/01 for response to the amended interrogatories that would include the outstanding production of documents for Plaintiffs 7/27/01 request. During that subsequent teleconference, the Request for Complete/Legible Initial Disclosures was identified and agreed by both parties as included in the 9/7/01 extension.

5. Defendant's 9/7/01 Responses to Plaintiff's Interrogatories and Requests for Production of Documents/ Answers to Requests for Production of Documents (copy enclosed), did not address in any manner the first page REQUEST FOR COMPLETE/LEGIBLE INITIAL DISCLOSURE of Plaintiff's Requests for Documents and Complete/Legible Initial Disclosure.

6. Defendant's Rule 26(a)(1)(B)A Exhibit 1: "Application for California Guaranteed Student Loan signed on May 6, 1985; loan amount $2,500.00 to attend the Travel and Trade Career Institute (TTCI)" original was filed with the Court as described in 1 above (Enclosure 2, US000001). Because the bottom is cut off, the back side is

missing and CSAC's facsimile stamp across the top makes it appear to have been mislabeled as a document from TTCI, this is a failure to disclose under FRCP 37(a)(3) substantial information related to Defendant's activities (for the "EDUC claim") that resulted in Plaintiffs cause of action in the matter before this Court.

7. Defendant's Rule 26(a)(1)(B)A Exhibits 3-5: "Receipt[s] for Pell Grant Check[s] from TTCI in the amount of [3] $975.0[sic] signed on August 14, 1985; [4] $656.00 signed on October 3, 1985; [5] $319.00 signed on October 3, 1985" originals were filed with the Court as described in 1 above (Enclosure 2, US000004-6). These receipts are illegible as to the identity of the bank on which they are drawn; they are also incomplete with respect to establishing authenticity, genuineness and relevance to the EDUC claim for such check receipts from TTCI demonstrating its acceptance of a grant purportedly made to Plaintiff after the first day of class that he identified, more than once since 1998 without dispute from Defendant, as the date he withdrew from enrollment without further contact with the school. These receipts are, therefore, incomplete and a failure to disclosure under Rule 37(a)(3).

8. Defendant's Rule 26(a)(1)(B)A Exhibit 6: "TTCI Student Enrollment Agreement signed on May 7, 1985" original was filed with the Court as described in 1 above (Enclosure 2, US000007). Because this document is almost entirely illegible, and appears to reference a reverse side for additional terms of contract that was not disclosed, this document is incomplete and a failure to disclose under FRCP 37(a)(3).

9. Defendant's Rule 26(a)(1)(B)B Exhibit 1: "Contact History Report dated December 31, 1992" original was filed with the Court as described in 1 above (Enclosure 2, US000014). This document is not only difficult to read and was not presented in a format understandable to Plaintiff by provision of a key or description of the information contained on it, but also Defendant has advised Plaintiff it is not a very clear copy and is not a

document that Defendant is familiar with and, therefore, Defendant cannot definitively determine if there are any notations showing Plaintiff's receipt of or response to mailing or telephone call, nor answer to what the "bad address" descriptions on it pertain to; this is a failure to disclose under FRCP 37(a)(3).

Having made good-faith attempts to address this issue with Defendant, and without intending to limit addressing such other materials produced in the disclosure and discovery phase of the matter before this Court should permission be required and given to address them at a later date, Plaintiff requests this Court to order Defendant's full-sized, legible, complete disclosure of all pages of the items identified in paragraphs 6 through 9 above, including such supporting documents as reasonably necessary to understand their contents or as should, in fairness to Plaintiff, be produced to demonstrate them as relevant, genuine and timely for the purpose of supporting the EDUC claim or addressing Plaintiff's Complaint for which they were introduced as exhibits in the listing of Defendant's Rule 26(a) disclosures.

s/*Bruce Edwards* — *10.1.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)
* * *[enclosures identified in text above]

#44 Motion (enlarge disp. mtn. per.) 10/3/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

(Filed United States District Court Denver, Colorado BB
OCT-3 2001 James R. Manspeaker Clerk s/KS)

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

MOTION FOR ENLARGEMENT OF PERIOD FOR DISPOSITIVE MOTIONS

Comes here now, Plaintiff pro se Bruce Edwards seeking an extension of the Scheduling Order #7c, Dispositive Motion Deadline of October 1, 2001, filed by this Court on May 18, 2001 for Civil Action #0l-BB-36 for the reasons stated herein.

1. As a pro se litigant, Plaintiff has focused the majority of his resources on producing a proper Amended Complaint to ensure its relevance and earliest production in this matter.

2. As a displaced employee at DIA, Plaintiff has recently had to engage in involuntary work search activities to the detriment of time available to him to devote to this matter.

3. Although the Certificate of Service accompanying it was inadvertently mis-dated by having been pre-printed as 9/10/01, but Plaintiff s Objections to Sufficiency of Defendant's Answer to Plaintiffs Requests for Admissions #1, 3, 4, 7, 8, 14, 20, 24 and 35 was signed on 9/12/01, Plaintiff has received no acknowledgment or response from Defendant.

4. While Plaintiff received responses to his second set of interrogatories (#34-50) and responses to, but not actual documents for, his requests for production of documents after mutual agreement of the parties to extend the deadline for requests to September 7, Plaintiff

is still in process of assessing Defendant's responses, for conference related primarily to questions of sufficiency in order to avoid the need for related motions to this Court, such as resulted in the accompanying Motion for Production of Complete and Legible Documents Presented as Defendant's Rule 26(a)(1)(B)A & B Exhibits.

5. Of the actual production of documents where Defendant did not claim, for instance, a lack of possession, custody or control, Requests #2 ,8, 13, 15, 17-22, and 24e-k were posted on 9/18/01, and are an inches-thick stack that Plaintiff has not finished reviewing for content in order to address any issues with Defendant to avoid need for related motions for production. As an example of why this is necessary, please see #24(f) in each of the enclosed:

- Requests for Documents and Complete/Legible Initial Disclosure,
- Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents/Answers to Requests for Production of Documents, and
- Production for Request No. 24(f), which is enclosed in its entirety (cover plus 1 page)

Plaintiff continues to work diligently on the discovery process, but finds the quantity and quality of Defendant's responses require more time for adequate communication and completion than by deadlines previously set by the Court, and respectfully requests an extension of the deadline for dispositive motions contingent upon completion of the discovery process, but at least similar to the three months provided for Final Trial Preperation Conference and Trial dates., reset by motion of this Court filed September 14, and amended September 24, 2001.

s/*Bruce Edwards* — *10.1.01*
Bruce Edwards, — Date
Plaintiff *pro se*
(303) 341-9433 (non-published, home)
* * *[bulleted enclosures listed above]

#47 Motion (extend disp. resp. ddl.) 10/10/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado *BB*
OCT 10 2001 James R. Manspeaker Clerk s/*DB*}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

PLAINTIFF'S MOTION FOR APPLICATION OF D.C.COLO.LR 7.1, OR IN THE ALTERNATIVE, FOR APPLICATION OF FED.R.CIV.P. 12(C)

Upon October 2, 2001, Minute Order entered by Magistrate Judge Boyd N. Boland in this matter, Plaintiff, pro se, hereby requests application of D.C.COLO.LR 7.1, "[a]n opposing brief shall be filed within twenty days after service of the motion or such additional time as the court may set...," which does not require setting a lesser amount of time for such response to a motion filed under Fed.R.Civ.P. 56; Defendant's subject Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1), its related brief, attached declarations and exhibits ("the Motion"), although not captioned as such, is in its first alternative a motion filed under Rule 56 Summary Judgment.

In the alternative, Plaintiff, pro se, hereby requests application of the same Local Rule cited above, under Fed.R.Civ.P. 12(c), "[i]f, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56...," based on the Motion's introduction of the matter of student grant disbursals, alleged to have been received by Plaintiff s signature in 1985, from the same school as originated the subject loan request for Plaintiff; the school's generation of a grant purportedly received by

Plaintiff's signature in 1985 is outside the original pleadings on Defendant's actions related to Plaintiffs disputed, undocumented receipt according to a promissory note for an advance, allegedly accepted by that school on Plaintiff's behalf on June 21, 1985, for which Defendant asserts a right to collect against Plaintiff on the basis that valid payment against the Federal guarantee for the loan request was made to a lender.

s/*Bruce Edwards* — *10.8.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#49 Order (deny enlarge (disp.) per.) 10/15/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
MAY 15 2002 PM 1:37 James R. Manspeaker Clerk s/JU}

Civil Number: 01-BB-0036
BRUCE EDWARDS,
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant

ORDER

This matter is before me on the following motions by the plaintiff:

(1) **Motion for Enlargement of Period for Dispositive Motions** (the "Motion for Enlargement"), filed October 3, 2001; and

(2) **Motion for Leave to Amend Complaint** (the "Motion to Amend"), filed October 4, 2001.

Neither motion contains a certificate of compliance with local rule of practice 7.1A, D.C.COLO.LR, which requires:

> The court will not consider any motion, other than a motion under Fed. R. Civ. P. 12 or 56, unless counsel for the moving party, before filing the motion, has conferred or made reasonable, good faith efforts to confer with opposing counsel to resolve the disputed matter. Counsel for the moving party [or the moving party if proceeding pro se] shall file a certificate describing specifically the efforts to comply with this rule.

Accordingly, IT IS ORDERED that the Motion for Enlargement and the Motion to Amend are DENIED for failure to comply with Rule 7.1A.

Dated October 12, 2001. BY THE COURT:

s/*Boyd N. Boland*
United States Magistrate Judge

#51 Motion (strike #41 Ex. 2) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

PLAINTIFF'S MOTION TO STRIKE EXHIBIT 2 OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO FED.R.CIV.P. 12(B[SIC])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion * * * Exhibit 2 attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * RULE:	GROUNDS to Strike EXHIBIT 2: Declaration of Glenda Rasca
FRCP# 37(c)(1)	Defendant did not disclose identify[sic] of Ms. Rasca under Rule 26(a) or 26(e)(1) and, thus, Declaration should be excluded * * *
FRCP# 56(e)	* * * not made on personal knowledge, does not set forth facts admissible in evidence, fails to show competence in matters stated.
FRCP# 56(g)	Introduction of issues related to school performance/"records" and the inclusion of allegations about which Ms. Rasca could not possibly have personal knowledge is unrelated to dispute of lender performance * * *
FRE# 104(a)	* * * on the basis of stated experience at that school since 1998 and, therefore, cannot competently attest in those areas with respect to 1985 issues in general or PlaintIffs experience in particular.

* * * RULE:	GROUNDS to Strike EXHIBIT 2: Declaration of Glenda Rasca
FRE# 402	* * * based on incomplete/uncertified "records" from 1985 without personal knowledge of the events and without addressing the disputed consummation of the 6/17/85 Note agreement with First Independent Trust * * * which prior to the Consolidated Omnibus Budge Reconciliation Act of 1985 (* * * effective for loan disbursements on or after January 1, 1986) did not require loan checks to be sent to schools nor provide for the school's endorsement of checks without students knowledge/consent on the basis of documenting attendance for part of the loan period--are not germane to establishing the existence an alleged obligation to Bank of America * * *, nor were Ms. Rasca's statements under consideration in Defendant's 3rd quarter, 2000, final agency action* * * and, therefore are irrelevant and and[sic] not admissible.
FRE# 403	* * * attestations about the incomplete/indecipherable enrollment contract, uncertified and self-contradictory documents/records first produced in 2001 * * * not relevant to existence of a debt to Bank of America on Plaintiff's part alleged by Defendant, nor was it part of Defendant's 3rd quarter, 2000, action* * * therefore lends confusion of the issues and is misleading.
FRE# 602	* * * not supported by evidence of, nor does it of itself indicate, Ms. Rasca's personal know ledge of Plaintiff's 1985 experience at TTCI.

* * * RULE:	GROUNDS to Strike EXHIBIT 2: Declaration of Glenda Rasca
FRE# 613	* * * as relevant * * * to the EDUC claim or to Defendant's 3rd quarter, 2000, action * * * is contradicted by Defendant's Answer (9/4/01) to Plaintiff's Requests for Admissions (7/27/01) #7 set forth here * * *: Admission 7: Prior to Plaintiff's original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him. Answer: Admit that. prior to this suit. Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant.
FRE# 106	* * * on the basis of 9 papers that do not comprise the official institution records required under applicable programs, see 34 CFR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(1), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)*iii).
FRE# 901(b) (2)	* * * includes assertions of Plaintiff's signing documents in implied identification/ authentication of the genuineness of those signatures without familiarity not acquired for the purposes of this suit.
FRE# 901(a)	Defendant/Ms. Rasca have not offered evidence sufficient to support a finding of admissibility based on authentication * * *

Respectfully submitted,

s/*Bruce Edwards* *10.15.01*

Bruce Edwards, Plaintiff, pro se Date

1001 Emporia Street, Aurora, CO 80010-3825

(303) 341-9433 (non-published, home)

#52 Motion (strike #41 Ex. 2/A) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Plaintiff's Motion to Strike Exhibit 2/A of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(B[sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibit 2/A attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
FRE# 104(a)	* * * an almost entirely illegible copy of the front side * * * at its bottom, "NOTICE: See reverse side for additional terms of contract." * * * Plaintiff's agreement with the school cannot be ascertained. Thus, Exhibit 2/A is irrelevant.
FRE# 106	* * * incomplete/illegible papers do not comprise the entire official institution records required under applicable programs, see 34 CFR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(1), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) that ought in fairness be considered contemporaneously with Exhibit 2/A.

* * * RULE:	GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"
FRE# 901 (b)(1)	* * * introduction of Exhibit 2/A is not made by one shown to possess the knowledge to authenticate it.
FRE# 402	The Motion's supporting Brief states, at pp. 16-17, "[t]he structure of the HEA clearly separates the student's enrollment contract, which establishes and governs the performance of the borrower's relationship with the school, and the borrower's obligation under the loan programs and the borrower's repayment obligation under the loan contract...the borrower's loan contract with the lender and the enrollment contract with the school are two separate transactions;" so Exhibit 2/A is not relevant to existence of a debt to Bank of America * * *, nor was it obtained by Defendant prior to 3rd quarter, 2000, action * * * is thus not admissible as irrelevant.
FRE# 403	* * * adds confusion of the issues and is misleading.
FRE# 602	* * * Glenda Rasca does not show experience at TTCI earlier than February, 1998; * * * does not connote knowledge of the illegible/missing terms and subsequent amendment or handling of that particular 1985 document.
FRE# 901(a)	* * * does not meet school record retention requirements under 34 CFR 668.24(d)(3)(ii)-(iii), of reproduction of accurate, legible, and complete copies, sized like originals, for documents, and of original, hard-copy maintenance of any document containing a signature required to validate the authenticity of its information; * * * so is not admissible.
FRE# 613	Defendant establishes the separation of enrollment versus loan contract liabilities * * * (quoted under FRE#402 objection herein). This is extrinsic evidence of inconsistent admissions of party-opponent/Defendant now asserting

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
	Exhibit 2/A is "evidence."
FRE# 901 (b)(2)	Ms. Rasca (Exhibit 2 author) does not profess to have known Plaintiff or to have worked at TTCI in May of 1985, and so is not qualified to offer the non expert opinion, based upon familiarity not acquired for purposes of the litigation, "[o]n May 7,1985, Mr. Edwards signed..." implying knowledge/identification of the handwriting on Exhibit 2/ A as genuine. (Note: this is not a denial of limited participation including enrolling at TTCI, but is an objection to representations made by Ms. Rasca.)
FRE# 901(b) (8)(A)	Without authenticating documentation or provenance accompanying Defendant's 2001 introduction to Plaintiff of documents from TTCI that were not disclosed to Plaintiff prior to his filing suit in this matter, Exhibit 2/A is an illegible/incomplete representation of the entire relevant student record * * *, and is not presented in such condition as to create no suspicion concerning its authenticity.
FRE# 901(b) (8)(B)	* * * as revealed by Defendant's 9/7/01 Answers to Requests for Production of Documents (7/27/01) for Request No. 11 set forth here: "Request No. 11: All extant school documents, records or reports in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access--but may not necessarily have queried the existence or required the production to date--so that the information, authorization or records they contain may be assessed for relevance to establishing the facts of Plaintiff's involvement with the school, the legitimacy of the alleged disbursement, and/or the existence of the alleged debt and the validity of Defendant's claim against Plaintiff.

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
	Response: *See* US0004-13. Defendant is not in possession. custody or control of any other documents that would satisfy this request;" Exhibit 2/ A is not authenticated by evidence that it was in a place where, if authentic, it would likely be.
FRE# 1001(3) FRE# 1001 (4) FRE# 1002 FRE# 1003	Exhibit 2/A is not an original/output readable by sight, shown to reflect the data accurately; not a duplicate/reproduction that accurately reproduces the original; not presented as excepted by Rules of Evidence/Act of Congress from requirement of original to prove the content of a writing/recording (particularly upon the representation that it is a part of the school's record related to Plaintiff, when its appearance violates 34 CPR 668.24(d)(3)(ii)-(iii); not admissible as a duplicate equal to an original because Plaintiff has raised a genuine question as to amendment of the original which may have been recorded on the back side so that it would be unfair to admit Exhibit 2/ A in lieu of the original
FRE# 1007	Plaintiff's acknowledgment of participating in the enrollment process at TTCI included his statements showing later amendment/cancellation of that enrollment contract, upon his fulfilling a requirement to submit his withdrawal in writing; since such cancellation may have been recorded on the back side * * *, failure to produce a complete and legible original is not accounted for by Plaintiff's admission.
FRCP# 56(e)	* * * production solely for [agency's] own defense in this suit; fails to show affirmatively that Ms. Rasca is competent to testify to all the matters stated in Exhibit 2 relative to Exhibit 2/A--which is not a sworn or certified copy * * * [see 34 CPR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(l),

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/A: "Enrollment Contract with TTCI"**
	(d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) * * * institution record requirements related to a student in the applicable program].
FRE# 401	* * * Applicable terms of the Note/contemporary regulations and Defendant's statements establish the limited school materials introduced/disclosed as being irrelevant to supporting Defendant's claim that Bank of America was the originating lender of an advance to Plaintiff in 1985, or reviewing Defendant's related third quarter, 2002[sic], action/decision.

Respectfully submitted,

s/*Bruce Edwards* — *10.15.01*

Bruce Edwards, — Date

Plaintiff, pro se

1001 Emporia Street,

Aurora, CO 80010-3825

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#53 Motion (strike #41 Ex. 2/B) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Plaintiff's Motion to Strike Exhibit 2/B of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(B[sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibit 2/B attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * RULE:	GROUNDS to Strike EXHIBIT 2/B:
FRE# 104(a)	* * * introduced in the Exhibit 2 Declaration of Glenda Rasca: "[p]rior to August 1985, TTCI received $2,459.58 from student loans for payment of Mr. Edward's tuition and fees. Exhibit B," but since the origin/authenticity of this exhibit has not been established, and since it does not indicate from whom or how TTCI received said "student loans," it is irrelevant.
FRE# 106	*[Note: Exhibit 2/B is initial disclosure's US000004]* Because Defendant's (9/7/01) Answers to Requests * * * for Production of Documents * * *: "Request No.2: A complete and legible copy of all contents of the Pell Grant

*** RULE:	GROUNDS to Strike EXHIBIT 2/B:
	application, including any separate instructions contemporaneously supplied to guide the completion of this application, with Plaintiff s 1985 signature requesting the funds that appear in the Pell Grant check receipts Defendant submitted to Plaintiff with Initial Disclosure (US000004-6). Response: Defendant is not in possession, custody or control of any such document. Defendant will produce under separate cover, however, the Records Disposition Schedules. Revised as of December 1998. with regard to how long the Department of Education is required to maintain Pell Giant Program Records;" Exhibit 2/B cannot be compared to its application, which ought in fairness be contemporaneously considered.
FRE# 401	* * * is the same initial disclosure document "US000004," for Defendant's Answer (9/4/01) to Plaintiff's Requests for Admissions (7/27/01) set forth here: "Admission 15: The Pell Grant Check receipt copies (US000004-6) provided to Plaintiff no earlier than Defendant's Initial Disclosures in this matter, do not show anywhere on their faces the exact amount of the proposed loan on the promissory note as student financial funds previously received bythe school. Answer: Admit," and "Admission 18: Defendant did not offer Plaintiff copies of US000004-6 for verification of his signature at any time prior to Initial Disclosures in this matter, despite Defendant's experience with Plaintiff's non-payment and disputes of the existence of the alleged debts since Defendant accepted assignment of the claim in 1993. Answer: Admit; Defendant did not obtain copies of US000004-6 until February 2. 2001;" the authenticity of the checks has not been

* * * RULE:	GROUNDS to Strike EXHIBIT 2/B:
	established through acknowledgment or documents of provenance, and Defendant did not examine them prior to 2/2/01, so Exhibit 2/B is irrelevant * * *
FRE# 402	Based on lack of relevance described in the FRE#401 objection herein * * * is not admissible
FRE# 602	* * * introduced (see p. 2 #5 of Exhibit 2 Declaration of Glenda Rasca* * *) under a lack of personal knowledge as to its origin and without introduction of evidence to support a finding that Ms. Rasca has personal knowledge of its history or authenticity.
FRE# 901 (b)(4)	It has not been established that Plaintiff's signature is consistent and unique enough to be authenticated/identified sixteen years after his name is written by any particular distinctive characteristics that would preclude the school's having signed his name without his consent, which he filed statement with Defendant as a belief with his 1997 request for review of the claim against him, years prior to Defendant's 2001 production of Exhibit 2/B * * *
FRE# 613	* * * Defendant's Answer (9/4/01) to Plaintiff's Requests for Admissions (7/27/01) set forth here: "Admission 20: Defendant did not advise Plaintiff of any investigation based on his dispute to having received the alleged loan, or make any inquiry of Plaintiff regarding details of his involvement with TTCI outside offering to accept Plaintiff's application to discharge an existing loan in response to his 1997 request for review. Answer: Object to this admission as including multiple statements. Subject to and without waiving this objection, deny first statement regarding investigation because there was no investigation; admit that Plaintiff offered the details of his involvement with

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/B:**
	TTCI, prompting Defendant's staff to send him the discharge applications and negating the need for further inquiry;" if investigation and further inquiry were deemed unnecessary to the determinations of the existence of debt and final agency action/decision, on Plaintiff's dispute, they should not be introduced on Defendant's.
FRE# 901(a)	* * * there is insufficient evidence to support a finding of authenticity and that Exhibit 2/B is what Defendant claims.
FRE# 901 (b)(1)	* * * the person under whose declaration Exhibit 2/B was introduced * * * is one who, by distance in time from relevant events, cannot authenticate or identify it based on personal knowledge.
FRE# 901 (b)(2)	Ms. Rasca, * * * can not know as a fact that "Plaintiff signed. . ." as to the authenticity of handwriting based upon familiarity that was not acquired for this suit.
FRE# 901(b) (8)(A)	Lacking authenticating documentation, not disclosed in response to Plaintiffs notice he believed the school signed his name (fIled in 1997), without provenance accompanying 2001 introduction of "documents" * * * is not authenticated/identified by evidence it is in such condition as to create no suspicion concerning its authenticity.
FRE# 901 (b)(7)	Department of Education Records Disposition Schedules (ED/RDS) dated 10/99, produced in reference to Defendant's Admission set forth herein under FRE#106 objection, includes: "**Pell Grant Program Records.** * * * "a. Student Records. * * *./ED/RDS, Part 10, Item 17a (N1-441-92-1, Item la) "b. Institution Records. * * * **Disposition**: Transfer to a Federal Records Center after final payment to grantee. Destroy 15 years after final payment or audit, whichever

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/B:**
	is sooner./ED/RDS, Part 10, Item 17b (N1-441-92-1, Item Ib)." Exhibit 2/B is, therefor, not authenticated or identified as having come from a writing, in any form, authorized by law to be recorded or filed as from the public office where items of this nature are kept.
FRE# 901(b)(8)(B)	See Federal Rules of Evidence #901(b)(8)(A) objection herein; Exhibit 2/B is not evidenced as in a place where, if authentic, it would likely be.
FRE# 902(4)	* * * not certified as a correct copy of public records * * * by the custodian/authorized by law and recorded/filed in a public office, so is not self authenticating.
FRE# 902(8)	Plaintiff does not acknowledge Exhibit 2/B; it is not/cannot be a notarized acknowledged document, so is not self authenticating as such.
* * *	* * *
FRE# 902(11)	* * *is not self-authenticating as a certified domestic record of regularly conducted activity: (A) made at or near the time of the occurrence of the matters set forth by information from a person with knowledge of those matters at TTCI in 1985, (B) kept in the course of the regularly conducted activity * * *; and (C) through regularly conducted activity as a regular practice: automatic grant processing as part of loan origination was not instituted until Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99- 272, 4/7/86, § 16032(b)] required determination of eligibility for a Pell Grant prior to loan approval for periods of enrollment on or after 1/1/86, and TTCI's marking the subject loan application (Motion Exhibit A) "#29(A) FINANCIAL AID FOR LOAN PERIOD: -0-" to indicate it was unaware Plaintiff would be awarded such grant is the sole/contradictory record related to Exhibit 2/B .

* * * RULE:	GROUNDS to Strike EXHIBIT 2/B:
FRCP# 37(c)(1)	Defendant was not substantially justified in failing to disclose, under FRCP 26(e)(1), the information that Exhibit2/B would be offered into evidence/by a declaration sworn under penalty of perjury under the laws of the United States of America stating "Plaintiff signed" the "receipted by" name written on Exhibit 2/B, so should not be permitted.
FRCP# 56(e)	Exhibit 2/B is not a sworn or certified copy * * *
FRCP# 56(g)	The Exhibit 2 declarations related to Exhibit 2/B were made in bad faith.

Respectfully submitted,

s/*Bruce Edwards* *10.15.01*

Bruce Edwards, Date

Plaintiff, pro se

1001 Emporia Street,

Aurora, CO 80010-3825

(303) 341-9433 (non-published, home)

#54 Motion (strike #41 Ex. 2/C-D) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 17 2001 James R. Manspeaker Clerk s/D}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Plaintiff's Motion to Strike Exhibits 2/C-D of Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(B[Sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibits 2/C-D attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * **RULE:**	**GROUNDS to Strike EXHIBIT 2/C-D:**
FRE# 104(a)	*introduced in the Exhibit 2 Declaration of Glenda Rasca under assertions that, on October 3, 1985, Mr. Edwards signed for Pell Grant checks, but Ms. Rasca does not profess to have known Plaintiff or worked at TTCI on October 3, 1985. Since the declaration related to these exhibits is not authenticating evidence, and since neither it nor Exhibits 2/C-D indicate/ establish the origin of TTCI's receipt of money recorded by them, they are irrelevant.
FRE# 106	*[Note: Exhibits 2/C-D are initial disclosure's US000005-6 respectively]* * * *[see same Rule in motion to strike Exhibit 2/B]*

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/C-D:**
FRE# 401	Exhibits 2/C-D are the same initial disclosure documents "US000005- 6," * * *[*see same Rule in motion to strike Exhibit 2/B*]
FRE# 402	Based on lack of relevance * * * they not admissible
FRE# 602	* * * introduced * * * under a lack of personal knowledge as to their origin and without introduction of evidence to support a finding that Ms. Rasca has personal knowledge of their history or authenticity.
FRE# 901 (b)(4)	It has not been established that Plaintiff's signature is consistent and unique enough to be authenticated/identified (16 years after his name is written) by any particular distinctive characteristics that would preclude the school's having signed his name without his consent, which he filed statement with Defendant as a belief in his 1997 request for review of the claim against him, years prior to 2001 production of Exhibits 2/C-D.
FRE# 901 (b)(1)	* * * the person under whose declaration Exhibits 2/C-D were introduced as evidence is one who, by distance in time from relevant events, cannot authenticate or identify it based on personal knowledge.
FRE# 613	Both subject exhibits contain the following on their faces: "MUST HAVE COMPLETED 18 UNITS FOR THIS CHECK, UNITS COMPLETED 0.00, AS OF 0/0, UNITS VERIFIED BY ..***am*** [commas added for clarity]," showing the contemporaneous record on this financial instrument/source document of the number of units completed/verified at its issuance does not meet the minimum requirement established/recorded on it; so there is no knowing if similar violations/liberties were recorded with the remainder of data on its face. * * * (see quote of admissions during discovery

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/C-D:**
	in this suit at FRE#613 objection in motion to strike Exhibit 2/B). * * *
FRE# 901(a)	* * * there is insufficient evidence to support a finding of authenticity and that Exhibits 2/C-D are what Defendant claims.
FRCP# 56(e)	* * *not a sworn or certified copy thereof * * *
FRE# 901 (b)(2)	Ms. Rasca, under whose declaration Exhibits 2/C-D were introduced * * * can not know as a fact that "Plaintiff signed.. ." as to the authenticity of handwriting based upon familiarity that was not acquired for this suit.
FRE# 901(b) (8)(A)	Lacking authenticating documentation, not disclosed in response to Plaintiff's notice he believed the school signed his name (fIled in 1997), without provenance accompanying 2001 introduction of "documents" * * * Exhibits 2/C-D are not authenticated/identified by evidence they are in such condition as to create no suspicion concerning their authenticity.
FRE# 901 (b)(7)	* * *[*see same Rule in motion to strike Exhibit 2/B*] Exhibits 2/C-D are, therefor, not authenticated or identified as having come from a writing, in any form, authorized by law to be recorded or fo;ed as from the public office where items of this nature are kept.
FRE# 901(b) (8)(B)	* * * not evidenced as from a place where, if authentic, they would likely be.
FRE# 902(4)	* * * not certified as a correct copy of public records * * * by the custodian/authorized by law and recorded/filed in a public office, so are not self authenticating.
FRE# 902(8)	Plaintiff does not acknowledge Exhibits 2/C-D; they are not/cannot be notarized acknowledged documents/are not self authenticating as such.

* * * RULE:	**GROUNDS to Strike EXHIBIT 2/C-D:**
FRCP# 56(g)	* * * related declarations in Exhibit 2 were made in bad faith.
* * *	* * *
FRE# 902(11)	* * *[*see same Rule in motion to strike Exhibit 2/B*]
FRCP# 37(c)(1)	Defendant was not substantially justified in failing to disclose, under FRCP26(e)(1), the information that Exhibits 2/C-D would be offered into evidence/by declaration, sworn under penalty of perjury under Federal laws, stating "Plaintiff signed for" Exhibits 2/C-D (see Exhibit 2, p. 2 ##6-7), so should not be permitted.

Respectfully submitted,

s/*Bruce Edwards* — *10.15.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#55 Motion (strike #41 Ex. 2/E-F) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado
OCT 17 2001 James R. Manspeaker Clerk ___}

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

Plaintiff's Motion to Strike Exhibit 2/E-F of Defendant's Motion for Summary Judgment or, in the Alternative, Motionto Dismiss Pursuant to Fed.R.Civ.P. 12(B[Sic])(1)

Comes here now, Plaintiff pro se Bruce Edwards, pursuant to Fed.R.Civ.P.12(f), to move Defendant's Motion for Summary Judgment or, in the Alternative, Motionto Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) Exhibits 2/E-F attachment, as insufficient defense, immaterial, and impertinent, be stricken on the grounds described for each Federal Rule identified herein below.

* * * **RULE:**	**GROUNDS to Strike EXHIBIT 2/E-F:**
FRE# 104(a)	* * * contradict other exhibits also introduced by Exhibit 2 (see FRE#901(a) herein), and Defendant did not receive them (see FRE#401 at Admission 7) prior to * * * Plaintiffs cause of action * * *, so Exhibits 2/E-F are irrelevant.
FRE# 106	* * * the entire official institution records required under applicable programs, see 34 CFR 668.24(c)(1)(i)- (vii), (c)(2)(iii), (d)(1), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) that ought in fairness be considered contemporaneously with Exhibits 2/E-F, is unavailable, according to Defendant (see Request and Response #11 at FRE#901(b)(8)(B) herein).
FRE# 901	* * * introduction of Exhibits 2/E-F is not made by one shown to possess the knowledge to

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
(b)(1)	authenticate them.
FRE# 403	* * * add confusion of the issues and are misleading.
FRE# 402	The Motion's supporting Brief states, at pp. 16-17, "[t]he structure of the HEA clearly separates the student's enrollment contract, which establishes and governs the performance of the borrower's relationship with the school, and the borrower's obligation under the loan programs and the borrower's repayment obligation under the loan contract. . . the borrower's loan contract with the lender and the enrollment contract with the school are two separate transacti°ns." Thus, a transfer of liability from the school to the lender is not established by Exhibits 2/E-F and they are thus irrelevant/inadmissible.
FRE# 602	The Exhibit 2 declaration of Glenda Rasca does not show her experience at TTCI began earlier than February, 1998. This does not connote knowledge of events connected to the production (before 1998?) of Exhibit 2/E-F printouts, and Ms. Rasca lack of personal knowledge of 1985 events at TTCI does not provide for her declarations about them.
FRE# 901(a)	Because Exhibits 2/E-F contain such self-contradictions as "Agency Sales" score date (Exhibit 2/E) on an "ANC, Absent No Call" date (Exhibit 2/F), and Exhibit 2/F also records "ANC, Absent No Call" on 10/3/85, in contradiction of Exhibits 2/C-D, none of these exhibits authenticates the other, and they are not established to be what Defendant claims-records related to Plaintiff.
FRE# 613	Defendant * * * did not have school documents at the time of final agency action/decision prior to this suit * * *. This is extrinsic evidence of

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
	inconsistent admissions of party-opponent now asserting Exhibits 2/E-F are "evidence."
FRE# 901(b) (8)(A)	Without authenticating documentation or provenance accompanying Defendant's 2001 introduction to Plaintiff of documents from TTCI (that were not disclosed to Plaintiff prior to his filing suit in this matter, despite volunteered declarations related to attendance). Exhibits 2/E-F were not timely obtained and have not been presented in such condition as to create no suspicion concerning their authenticity.
FRE# 901(b) (8)(B)	* * * Defendant's 9/7/01 Answers to Requests for Production of Documents (7/27/01) for Request No. 11 set forth here: "Request No. 11: All extant school documents, records or reports in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access—but may not necessarily have queried the existence or required the production to date—so that the information, authorization or records they contain may be assessed for relevance to establishing the facts of Plaintiff's involvement with the school, the legitimacy of the alleged disbursement, and/or the existence of the alleged debt and the validity of Defendant's claim against Plaintiff. Response: See US0004-13. Defendant is not in possession, custody or control of any other documents that would satisfy this request;" Exhibits 2/E-F are not authenticated by evidence that they were in a place where, if authentic, it would likely be * * *
FRCP# 56(e)	The related Exhibit 2 declaration was not made on personal knowledge; did ,not set forth such facts as would be admissible in evidence in view of Defendant's lack of their possession/exclusion

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
	of their existence from deliberations for its action/decision related to Plaintiff. They have been produced in relation to any claim against Plaintiff, solely for Defendant's own defense in this suit. This fails to show affirmatively that Ms. Rasca is competent to testify to all 1985 the matters stated in Exhibit 2 relative to Exhibits 2/E-F—which is not a sworn or certified copy * * * see 34 CFR 668.24(c)(1)(i)-(vii), (c)(2)(iii), (d)(l), (d)(3)(iii)-(iv) and §682.610(b), (c)(2) & (c)(2)(iii) * * * record requirements related to a student in Defendant's relevant programs].
* * *	* * *
FRE# 901 (b)(9)	Defendant's Motion Exhibit 2 p. 3 #9 introduces Exhibit 2/F: "[a]ttendance was recorded by the instructors and entered into a computerized attendance system." The handwritten page for May, 1985, Defendant submitted as initial disclosure US00009 is not included in Exhibit 2/F. Using the initial disclosure numbers on the lower right of each page of Exhibit 2/F, the following may be conflrmed about the product attributed to a "computerized attendance system:" US000010 • omits column headings • omits class & student columns for 6/3-6/7 /85 • omits contract # & student columns for 7/1-7/31/85 • omits May, 1985, from running tally US000011 • omits column headings • no columns for contract # or name for 9/2-9/30/85 • omits May, 1985, from running tally US000012 • introduces column headings

* * * RULE:	GROUNDS to Strike EXHIBIT 2/E-F:
	• name & class columns moved to right side of printout • begins June data with double-entry for 10/31/85 • repeats 6/12-7/31/85 & 9/2-9/5 with new columns • omits any monthly/running tallies US000013 • omits column headings • cuts off first entry • 3rd repetition of 9/9-9/30 • omits monthly/running/final tallies. There is no indication when these sheets were created, or that they are indeed the product of a vocational school (teaching airline computer systems) and doing business since May 2, 1967, such as TTCI (#99 1713 27, LA County, CA, County Recorder), keeping attendance records by computer system: they are not self-authenticating.

Respectfully submitted,

s/*Bruce Edwards* *10.15.01*

Bruce Edwards, Plaintiff *pro se* * * *[add/ph.] Date

#56 Motion (enlarge disp. resp. ddl.) 10/17/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

(Filed United States District Court Denver, Colorado *BB* OCT 17 2001 James R. Manspeaker Clerk s/*D*)

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

Plaintiff's Motion for Enlargement of October 15, 2001, Period in which to Respond to Motion for Summary Judgment or, in the Alternative, Motion

to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1); Set by Minute Order filed October 2, 2001

Pursuant to D.C.Colo.LR 7.1F, Plaintiff hereby submits this motion as captioned above, due to the brevity of the period originally allotted and the requirement to produce responsive motions to strike because of the content of the motion to which Plaintiff has been ordered to respond. Plaintiff served/filed a similar request on October 8, but has received no answer from the Court to any motions he filed since October 1, 2001. Plaintiff is working in good faith to complete his responsive brief as close to the Court's deadline as possible; Defendant's introduction of evidence not part of the third quarter, 2000, final agency action/decision, which both parties agree as the time Plaintiff's cause of action arose, has complicated the response incredibly. Further, Plaintiff understood 20 days to be the standard deadline for response briefs of this kind, and respectfully asks for that full period to be applied in this case.

s/*Bruce Edwards* *10.15.01*
Bruce Edwards, Plaintiff, pro se Date
1001 Emporia Street, Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#59 Motion (strike #41 Ex. A) 10/22/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado
OCT 22 2001 James R. Manspeaker Clerk ___}

Civil Action No.: 01-BB-36

Bruce Edwards, PLAINTIFF

v.

United States Department of Education, DEFENDANT

Fed.R.Civ.P. 12(f) Motion to STRIKE as inadmissible for Defendant: Exhibit A of *Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1);* and to RESTRICT related Fed. R. Civ.P. 26(a)(1)(B)

A "Exhibit 1: Application for California Guaranteed Student Loan signed on May 6, 1985; loan amount: $2,500.00 to attend the Travel and Trade Career Institute (TTCI)" to appearance in this suit without inference between 5/6/85 and 4/28/01: Fed.R.Evidence 105

Pursuant to Fed.R.Civ.P. 12(f), Plaintiff pro se, Bruce Edwards, hereby submits, as captioned above, this "Motion to STRIKE Exhibit A/May 6, 1985 Guaranteed Student Loan Application," as for Defendant upon findings of insufficient defense, immaterial, impertinent or scandalous matter, on grounds set forth below with corresponding Federal Rules of Evidence (FRE) or Fed.R.Civ. P. (FRCP) numbers to indicate the main rule intended for those grounds, but not to limit consideration of other applicable rules; with grounds to "RESTRICT related Fed. R.Civ.P. 12(a)(1)(B)A Exhibit 1, under Fed.R.Evidence 105" immediately following grounds "to strike:"

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
FRE# 902(4)	Exhibit A is not, and cannot be (due to its incomplete condition) certified by CSAC, its custodian, as a true and correct copy of Plaintiff's student loan application from its public records, which would also contain other relevant documents and records; Defendant initially disclosed Exhibit A as a school record, so it is not admissible *for Defendant's purposes.*
FRE# 1001 (4)	Because it is incomplete/missing the bottom signature and identification of the other natural person signing it on the face, and the entire reverse side that the face says contains additional terms and conditions included in each party's agreement, Exhibit A is not a duplicate accurately reproducing the original, so is not admissible *for Defendant's purposes.*
FRE# 1003	Genuine questions arise as to the authenticity of Exhibit A as to "the lender" alleged to have

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
	originated any related loan therefrom, as to Defendant' s dual identification/representation of its source, and as to handling subsequent to its signing—its complete terms are not even available to verify through Defendant's submission. Under these circumstances it would be unfair to Plaintiff to admit Exhibit A in lieu of the complete, legible original and documents to support its valid use by a lender with whom Plaintiff had a proposed agreement, so it is inadmissible *for Defendant's purposes,* as evidence of the EDUC claim/support of Defendant's related decisions/actions against Plaintiff.
FRE# 104(a)	Exhibit A is not admissible as defense to Plaintiff's cause of action (collection activities/ Treasury offset) even as to preliminary agency decisions, because its relevance is conditioned on actual connection to Defendant's decisions/ actions related to a specific, alleged defaulted student loan claim against Plaintiff. The "FOR LENDER USE LOAN IDENTIFICATION" area of Exhibit A bears only a check mark, and there is no lender/loan identification on this submission from Defendant. The sole loan document Defendant provided Plaintiff prior to this suit was a promissory note he signed on June 17, 1985,[1] that identifies (on the Motion's Exhibit B, for example) the proposed originating lender related to his 1985

[1] September 4, 2001, Defendant's Answer to Plaintiffs Requests for Admissions (7/27/01): Admission#6/Answer, each set forth in their entirety here below:
[Requested Admission] "6. Prior to Plaintiff s original 1/200 1 filing with this Court in this matter, as far as copies of actual loan documents, Defendant only provided Plaintiff with copies of the promissory note related to the account"
"Answer:: Admit"

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

application for a guaranteed student loan to have been "First Independent Trust, O.E. Lender Code Number 828374 8700766," which Defendant's Brief (p. 4, #2) names immediately after introducing Exhibit A under "FACTS...A. Plaintiff's Loan," in reference to the Navarro Decl. ¶17. Neither the Navarro Decl. nor the Brief names another fmancial institution in relation to the EDUC claim at any point after introducing that "fact,"subsequently referring only to "the lender."

Defendant's "GSL Program Specific Screen" (Motion's Exhibit C) records "LENDER: 801178." Defendant did not include, as a Motion or Brief exhibit, disclosure of FRCP 26(a)(1)(B)C "Exhibit 4: Debt Level Information Screen [L109] and explanatory sheet" (L109 dated 1/23/01). That document identifies: "ORIGINATING LENDER: 801178 B OF A TRUSTEE C/O CMSC," also appearing under its "CLAIMING LENDER AND ADDRESS" entry. That "B of A" 801178 lender number also appears on Defendant's disclosure FRCP 26(a)(1)(B)B "Documents from California Student Aid Commission," similarly not included as an exhibit to subject Motion and Brief. In that one-page 12/31/92 "Contact History Report," CSAC's second earliest entry (3/19/87) contains "801178;" the earliest entry does not identify a lender. Without information under "FOR LENDER USE/LOAN IDENTIFICATION," Exhibit A fails to establish which of the two "originating" lenders in this matter were connected with said application. Not having received Exhibit A

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

prior to the filing of the Complaint,[2]

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[2] September 12, 2001, *Plaintiff's Objections to Sufficiency of Defendant's Answer to Plaintiff's Requests for Admissions,* Admission/Answer/"Reason to amend Answer to Admission 7;" parties' exchanges related to requested admission #7, offered only for the truth of the assertion made in the main paragraph above at this footnote, are set forth in their entireties here below:
[Requested Admission] "7. Prior to Plaintiffs original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him." "Answer: Admit that, prior to this suit, Defendant did not have possession of any documents, nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant."
Reason to amend Answer to Admission 7: Defendant's possession of the documents that are the subject of the requested admission was not necessarily prerequisite to providing copies of them to Plaintiff, by request or order to the appropriate program participant(s). Good faith does not require that the Answer to the requested admission be qualified by a claim related to that limited aspect of logistics in not having providing Plaintiff such records and documents. ¶ *Also, Defendant's assertion, "nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant)," neither fairly meets the substance of the requested admission nor answers a good faith requirement to qualify this Answer; Defendant apparently means for these matters to be conclusively established upon admission under Rule 36 without this Court's decisions about required regulatory compliance with administrative procedures on collection, use, maintenance, dissemination and independent verification of information related to Plaintiff with such accuracy, relevance, completeness and timeliness as reasonably necessary to assure fairness in determinations adverse to him about the EDUC claim.* ¶ *As written, this Answer is an effective denial of the requested admission without fairly meeting its substance and substitutes an admission addressing Defendant's preferred perspective on thefact that Plaintiff did not receive any copies of the subject documents prior to Defendant's production of those limited materials under Rule 26(a)(1) disclosure.*

* * * RULE:	GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"
	for reference in Defendant's related preliminary or final agency actions/decisions, Defendant cannot establish its admissibility for its purposes based on its consequence to the "facts" of the EDUC claim
FRE# 106	Exhibit A omits the identify[sic] of the TTCI representative for that transaction; it contains language indicating further terms and conditions were part of the agreements, at #19 "conditions and authorizations given in the 'student certification' printed on the reverse of this application" and at #22 "the conditions given in the 'educational institution certification' printed on the reverse of this application," which ought in fairness to be considered contemporaneously with Exhibit A, requiring the introduction of the remainder of its front side and its entire back side, to quality[sic] for admissibility *for Defendant's purposes.*
FRE# 401	Plaintiff has never disputed having participated in enrollment/loan origination at TTCI—but denies and disputes the extent Defendant attributes to his involvement; including grounds described under FRE#104(a) herein, presentation of Exhibit A (as a small portion of otherwise absent "lender" documents, except for the promissory note Plaintiff also signed during TTCI's loan origination for him) does not tend to establish the disputed subsequent extent to which each process or liability included Plaintiff, so is inadmissible *for Defendant's purposes.*
FRE#402	Exhibit A is not relevant to the EDUC claim (see grounds/FRE#104(a) and FRE#402 herein), so it is not admissible *for Defendant's purposes.*
FRE#403	Because Plaintiff's participation in TTCI's loan origination for him in 1985 is not in dispute, presentation of Exhibit A only confuses the

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

issues of whether First Independent Trust executed/consummated the EDUC claim promissory note by an advance to Plaintiff according to its express written terms, if that disputed advance actually lead to the EDUC claim for Bank of America as the originating lender, and if Defendant's collection activities and actions/decisions against Plaintiff were justified.

Exhibit A also tends to mislead by implying subsequent lender action was taken for which documentation and records were in Defendant's possession prior to this suit,[3] possibly to imply substantial justification for not exercising the option to preserve lender records[4] (if, indeed, any ever existed) beyond regulatory retention expirations[5] for the EDUC claim-despite the

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[3] *See* requested admission #7 exchanges between parties in this matter set forth above in these footnotes.

[4] *See* source of Defendant's admissions identified in footnote 1 here above, from which admission/answer *[Plaintiff reserves right to object]* for Plaintiffs request #22 set forth here:
[Requested Admission] "22. Defendant did not exercise the option to preserve school, lender and state guarantor records beyond regulatory retention expirations."
"Answer: Object to this admission as containing multiple statements. Subject to and without waiving this objection, deny as to the school and state guarantor records, deny that Defendant received documents from the lender, admit as to lender."
[Plaintiff does not waive right to object that in Answer to requested admission #22, Defendant denies not exercising the option to preserve records with respect to CSAC, but see record retention required of CSAC cited where reserving right to object to Admission / Answer#7 versus single document listed in Defendant's FRCP 26(a)(1)(B)B; and institutional program-student record retention requirements of 34 CFR 682.604(g)(4), p. 731, and under 34 CFR 682.610(b), p735, incorporates / references 34 CFR 668.24(c)-(e), pp. 422-3 versus Defendant's FRCP 26(a)(1)(B)A.

[5] 34 CFR 682.414(a)(4)(iii), p. 703

* * * RULE:	GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"
	fact that Defendant was aware Plaintiff had not made any voluntary payment for the alleged loan at the time of accepting the default claim against him.[6] so is inadmissible * * *
FRE# 901 (b)(7)	Where a Loan Application is normally a part of public records/reports authorized by law to be recorded or filed where items of this nature are kept,[7] and Exhibit A is implied to reflect that ,by Defendant's inclusion of it as evidence in the subject Motion/Brief to which Plaintiff has been required to respond,[8] a version of Exhibit A was originally disclosed by Defendant under the FRCP 26(a)(1)(B)A section designating school records/documents and it has not been authenticated/identified as a true and correct recorded or filed copy from the public office where items of this nature are kept, so is inadmissible * * *
FRE# 901(b) (8)(A)	* * * the facsimile transmission stamp partially appearing across the top of Exhibit A * * * [the same incomplete document presented to Plaintiff as FRCP 26(a)(1)(B)A "Documents from Travel and Trade Career Institute: Exhibit 1: Application for California Guaranteed Student Loan * * *"] was sent through "EDFUND POST-DEFAULT SERVI 916 526 7209," the facsimile * * * stamp of CSAC's servicer, appearing at the top of the only document submitted for Defendant's FRCP 26(a)(1)(B)B "Documents from California Student Aid Commission."

[6] *See* source of admissions identified in footnote # 1 above; requested admission/answer #21 are set forth in their entirety here: [Requested Admission] "21. Defendant was aware that Plaintiff had not made any voluntary payment for the alleged loan at the time of accepting the default claim against him." "Answer: Admit."

[7] 34 CPR 682.409(c)(4)(iv), p. 734

[8] Minute Order Entered by Magistrate Judge Boyd N. Boland filed October 2, 2001.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
	Defendant's * * * response to Plaintiff s request for production of all extant school documents, records or reports related to the EDUC claim[9] revealed * * * the school's "records" were not supported by a complete student record related to him, and had been misrepresented as more substantial than they are, by FRCP 26(a)(1)(B)A disclosure listing. Defendant did not meet FRCP 26(e)-(e)(1) duty to correct filing initial disclosure of this * * * as a "school document/ record." Even if not incorrectly attributed to TTCI in Defendant's subject Motion/Brief, Exhibit A has been submitted or filed by Defendant as originating from two sources, which was misleading, so it is not in such condition as to create no suspicion concerning its authenticity *for Defendant's purposes.*
FRE# 901(b)(8)(B)	* * * Exhibit A is not authenticated/identified by evidence that it was in a place where, if authentic, it would likely be, so is inadmissible *to establish validity for the EDUC claim* * * *

[9] On July 27, 2001, Plaintiff mailed Requests for Documents and Complete/Legible Initial Disclosure; on September 7, 2001, Defendant mailed Defendant's Responses to Plaintiffs Interrogatories and Requests for Production of Documents/Answers to Requests for Production of Documents. The parties' exchanges with respect to item 11 are set forth here in their entireties:
11. All extant school documents, records and reports, in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access—but may not necessarily have queried the existence or required the production to date—so that the information, authorizations or records they contain may be assessed for relevance to establishing the facts of Plaintiff's involvement with the school, the legitimacy of the alleged disbursement, and/orthe existence of the alleged debt and the validity of Defendant's claim against Plaintiff.
Response: See US0004-13. Defendant is not in possession, custody or control of any other documents that would satisfy this request.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**
FRE# 1007	* * * Exhibit A is not admissible *for Defendant's purposes* as if Plaintiff's acknowledgment of such limited participation at TTCI would account for the failure to produce the loan application that Defendant claimed to have disclosed as Fed.R.Civ.P. 26(a)(1)(B)AExhibit 1.
FRCP# 37(c)(1)	Without substantial justification, Defendant failed to correct, as required by Fed.R.Civ.P. 26(e)(1), identification of the source of Exhibit A by initial disclosure of it as a document from the school. This misidentification lent unjustified weight to the school's "records," that turn out to be self-serving "attendance" attributed to Plaintiff to support grant checks also attributed to Plaintiff much later than Plaintiff has long been on record in identifying his withdrawal without further contact with the school—Defendant effectively falsified the "school records" to lend credence to assertions by that interested party (whom Plaintiff is long on record as believing signed his name)[10] of "legitimate" receipt of loan and grant proceeds, supported only by unauthenticated "attendance records." This was misleading to Plaintiff and the Court. Failing required prompt correction of its source, Exhibit A should is[sic] inadmissible at trial, a hearing, or on a motion, *for Defendant's purposes.*
FRCP# 56(e)	Exhibit A is not a sworn or certified true and correct copy of the application referred to in ¶17 of the Navarro Decl. submitted with Defendant's subject Motion and Brief as Exhibit 1, so is inadmissible *for Defendant's purpose of supporting the EDUC claim / related actions.*

[10] Exhibit E at 10/30/97 entry, "STATES HE DID NOT HAVE A HIGH DIPLOMA/GED AND THT THE SCH SIGN HIS NAME"

* * * RULE:	GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"
* * *	* * *
FRE# 901 (b)(9)	Defendant has disclosed that, as late as April 20-28, 1992 * * * CSAC allowed the guarantee of "loans" based on receipt of applications from loan-originating schools prior to, and sometimes without, subsequent lender approval/advance of the requested loans, and allowed third-party transfer of loans from one lender to another.[11]

[11] * * * Finding 1: Administrative Cost Allowance Receipt on Loans Prior to Lender Approval A participating school may transmit an application electronically to CSAC for guarantee prior to the lender's approval. If the lender never sends the application back to EDS, the loan is reported as an undisbursed loan and ultimately canceled. In this instance. Administrative Cost Allowance is paid on a "loan" when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school. Citation: 34 CFR 682.100(b)(1); 34 CFR 682.407 Required Action: A guarantee agency guarantees lenders against losses. Thus, the agency may not receive Administrative Cost Allowance (ACA) on a loan on which it issues a "guarantee" unless the lender has decided to make the loan. The agency may receive ACA on a loan only when the lender has notified CSAC that the loan was accepted. In response to this report, the guarantee agency must detail the procedures which have been adopted to assure that CSAC does not bill for ACA on loans before lenders accept those loans.
Finding 27: Current Holder Code: System Allows Third-party Transfers of Loans The EDS System allows the transfer of loans between two lenders by a third party (neither the buyer nor the seller). The decision not to place an edit in the system to prevent third-party transfers of loans between lenders was stated to have been made to accommodate servicers so that loans could be transferred on behalf of their clients. However, ED staff on site at Lender "A" actually transferred loans on the CSAC system from Lender "B" to Lender "C." (It must be noted that, after this process, the loans were transferred back to the correct holder so that servicing would not be affected.) Citation: 34 CFR 682.401 (b) (10) Required Action: Procedures * * * with the response to this report.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

As late as February 18, 1994, [after Exhibit C's "DATE ENT: 05/25/93" 'date ED accepted assignment from guarantor'] Defendant found CSAC policy allowed cancelling and reissuing of loans by lender-override; Defendant was concerned this was used without adequate monitoring by CSAC, specifically if the correct reason code (cancelled or unconsummated) was not keyed in by the lender.[12]

Defendant's January 26-February 6, 1998, fIrst review finding includes, "[s]ome years ago, loans tainted by fraud (held by Bank of America as trustee for California Student Loan Finance

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[12] **By September 10, 2001, production of documents for Defendant's response to Interrogatory #43 * * *:**
Under cover of June 10, 1994, letter to Mr. Michael Carona, Chairman, California Student Aid Commission, 1515 "S" St, Suite 500, P.o. Box 510845, Sacramento, CA 94245-0845 from Bonnie S. Gonzalez, Acting Chief, Guaranteed Student Loan Branch; 1/31-2/4, 2/7-2/11 & 2/14-2/18/94 interim report:
FINDINGS AND REQUIREMENTS, items #19 set forth here:
Finding 19: Excessive Collection of Administrative Cost Allowance
It is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions. The Administrative Cost Allowance (ACA) paid to the agency by the Department is calculated by subtracting the unconsummated loans from the total loans guaranteed. Since ACA is not paid for unconsummated loans, the loan must be correctly identified as cancelled or unconsummated by the lender.
The Department is concerned that lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or unconsummated) is not keyed in by the lender, the Agency may receive ACA to which it is not entitled.
Citation: 34 CFR 682.407
Required Action: The Agency must provide information as to the extent of this activity on the agency's complete loan portfolio. CSAC stated that these loans can be identified through use of the "Y" code in the "edit override" field. Upon receipt of documentation that will provide an accurate estimate of the extent of this issue, the Agency may be given further required action.

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

Corporation, serviced by United Education and Software) were to be identified..."[13]

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[13] * * * Under cover of August 14, 1998, letter to Ms. Jackie Tsang, Acting Executive Director, California Student Aid Commission, * * * from N. Rao Palagummi, Senior Guarantor & Lender Review Specialist, Guarantor & Lender Oversight Service; 1/26-2/6/98 review report: FINDINGS AND REQUIRED ACTIONS * * *:
Finding 1: Incorrect listing of outstanding loans by the Financial Aid Processing System (FAPS): It appeared that the Financial Aid Processing System listed many loans as outstanding when it is likely they are paid in full. The Agency began its lender loan reconciliation effort in approximately 1994; it is not yet completed. The Agency has a listing of 215 LIDs[*] (approximately 500,000 loans) that are not yet 100% reconciled as part of its reconciliation effort and has further identified that many of the loans attributable to these LIDs have been outstanding for over ten years. Some examples of the lenders on this list include:
* * * 801178 Bank Of America, Trustee for CMSC # loans 11,342
828374 First Independent Trust, # loans 2,822
Additionally, the Agency has a report that compares the loans on FAPS to the loan balances transmitted by the lenders for NSLDS purposes (Lender NSLDS[*] Quarterly Data Compliance Report). The LIDs and their associated loans on the NSLDS report largely appear to be the LIDs on the list of lenders whose portfolios have not yet been reconciled. It appears, therefore, that not only are the loans paid-in-full greatly understated but also reported incorrectly to NSLDS. Some years ago, loans tainted by fraud (held by Bank of America as trustee for California Student Loan Finance Corporation, serviced by United Education and Software) were to be identified; we were unable to confirm whether any of the unreconciled loans should have been marked unreinsurable. [Plaintiff's Note: emphasis added to "flag" main paragraph quote.] Citation: 34 CFR 682.414 Required Action: With the response to this request, the Agency must provide (1) information on the action/steps it anticipates taking to conclude the lender reconciliation to 1/1/95; (2) the procedures it will implement to ensure that the data reflected on the FAPS and the data reported to NSLDS for loans in repayment agree; (3) its plans for lender reconciliation of loans guaranteed subsequent to 1/1/95; and (4) assurances that the Bank of America fraud loans have been properly coded.
[* Plaintiff's Notes: believe LIDs refers to Lender Identifications and NSLDs refers to National Student Loan Data System.]

* * * RULE:	**GROUNDS to Strike EXHIBIT A: "May 6, 1985 [***GSL-Loan] Application"**

Defendant's earliest CSAC review report (April, 1992) provided as discovery in this matter also mentioned these 'B of A c/o CSLFC (UES)' loans, in ¶2/Finding 32).

Plaintiff signed the application and the promissory note at TTCI (loan-originator), school code #007926 (see #25 on Exhibit A, and between Borrower Name and SSN on Exhibit B). No lender documents from any lender not the loan originating school have been produced

* * *

In the absence of optional/required lender records, Exhibit A is not authenticated by CSAC process/system producing accurate results and proving the EDUC claim resulted from guaranteed on application from TTCI only after lender approval/advance, or that Bank of America appearing as "originating lender" for the EDUC claim is not the result of fraud; thus, it is inadmissible *for the purposes of supporting the EDUC claim and Defendant's related actions. / decisions adverse to Plaintiff.*

Grounds to RESTRICT corresponding initial disclosure of Defense Fed.R.Civ.P.(12)(a)(1)(B)A "Exhibit 1..." to Appearance in this Suit Without Inference between 5/6/85 and 4/28/01

* * * it would not be just to infer or attribute more than the facts of which BOTH parties can be certain:

a) Plaintiff acknowledges signing a loan application at TTCI in May of 1985;

b) Fed.R.Civ.P. 26(a)(1)(B)A Exhibit 1 is believably a copy of a portion of Plaintiff's 1985 application, but cannot be deemed the copy of any "loan application," and has no merit as a legal document;

c) after Plaintiff s signing a loan application at TTCI, neither he nor Defendant has certain knowledge of the uses to which it was applied before this suit until after

the turn of the century when Defendant "disclosed a copy;"

d) writing and printing can be discerned, and so would be admissible for purposes of establishing the content of those portions as disclosed to Plaintiff and the Court, but inadmissible for purposes of establishing the valid execution of the terms and conditions of the original agreement that has not been entered into evidence,

e) this "loan application" was first introduced by Defendant to Plaintiff with respect to the EDUC claim against him, under Fed.R.Civ.P. in this matter on April 26, 2001, with expressed and implied representations, at that time and since, about its source, content and history—promoting presumptions about Plaintiff, TTCI, "the lender," CSAC, and Defendant performances subsequent to its signing.

Limited to the scope of the above-listed "facts" and their just inferences, as the certain knowledge of both parties in this matter, a "*partial loan application copy*" is admissible for:

- demonstrating its incompleteness;
- demonstrating its legible contents;
- demonstrating inclusion in "school records" that Plaintifffirst received on April 28, 2001, introducing (versus Plaintiff's previously undisputed declared/recorded recollection of limited involvement with TTCI) an implied more complete/genuine school record to support the EDUC claim against Plaintiff's years-old-memory than justified—only days prior to required May 3, 2001, settlement statement production by order of this Court;
- demonstrating probable impact of its first introduction as part of "school records" on Plaintiffs good-faith concession/settlement statement of May 3, 2001, that *if Defendant does have evidence proving a claim Plaintiff had no record, recollection, or belief of incurring,* Plaintiff should include its payment in any

settlement for his cause of action –where the impressions given the Court—*both* by such concession (in which Plaintiff did not acknowledge remembering the involvement TTCI attributed him, only that official records might prove his memory was faulty), *and* by the inflated "authenticity" of that "disclosure" from the TTCI implying a complete/genuine set of 1985 records related to Plaintiff—more likely than not had a detrimental effect on the reception of Plaintiff s subsequent statements and activities in this suit;

- demonstrating the lack or absences of facts on subject copy with respect to reasonable conclusions upon dispute related to the handling of the original document; and
- comparison of the contents/condition of the subject copy to legal and regulatory requirements related to it by all involved institutions and agencies.

Respectfully submitted in its entirety, including footnotes following, as signed and dated below:,

s/*Bruce Edwards* — *10.19.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

* **NOTE: Unless otherwise indicated, all citations herein refer to CFR Revised as of July 1, 1999, or USC Revised as of January 6, 1999, upon which Plaintiff mainly relied in developing his Complaint**—before 6/6/01 receipt of the first legible copy of the reverse side of the Note (Exhibit B) on which Paragraph XII identifies interpretive code/regulations.

#62 Motion (strike #41 Ex. B) 10/23/01

UNITED STATES DISTRICT COURT
FOR THE DISTIRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB
OCT 23 2001 James R. Manspeaker Clerk DB}

Civil Action No.: 01-BB-36

Bruce Edwards,
PLAINTIFF

v.

United States Department of Education,
DEFENDANT

Fed.R.Civ.P. 12(f) Motion to STRIKE as Inadmissible for Defendant: Exhibit B of *Defendant's Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1);* and to RESTRICT related Fed. R. Civ.P. 26(a)(1)(B)A "Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985" as Defense Presented, Without Inference between 6/17/85 and 4/28/01: Fed.R.Evidence 105

Pursuant to Fed.R.Civ.P. 12(f), Plaintiff pro se, Bruce Edwards, hereby submits, as captioned above, this "Motion to STRIKE Exhibit B/June 17, 1985 Promissory Note and Disclosure Statement," as for Defendant upon findings of insufficient defense, immaterial, impertinent or scandalous matter, on grounds set forth below with corresponding Federal Rules of Evidence (FRE) or Fed.R.Civ.P. (FRCP) numbers to indicate the main rule intended for those grounds, but not to limit consideration of other applicable rules; with grounds to "RESTRICT related Fed. R.Civ.P. 12(a)(1)(B)A Exhibit 2, under Fed.R.Evidence 105" as for Plaintiff[sic], immediately following grounds "to strike:"

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
FRE# 401	* * * Defendant's claim turns out to be for a different originating lender than Plaintiff had any agreement with (see FRE#104(a) grounds); Exhibit B does not tend to make the existence of any fact of consequence to Defendant's collection activities/final agency action *for the EDUC claim / Bank of America* more or less probable, so is not relevant *for Defendant's purposes.*
FRE# 402	As described herein under FRE#104(a), FRE#106, and FRE#401 grounds, Exhibit B *is not relevant to the EDUC claim and Defendant's related actions / decisions against Plaintiff* and, therefor, is not admissible *for Defendant's purpose* of supporting its defense.
FRE# 104(a)	Exhibit B identifies the party with whom Plaintiff entered an agreement, contingent upon the later advance to him of a student loan, as "First Independent Trust, O.E. Lender Code Number 828374 8700766." Amid frequent references in the Motion/Brief/Exhibit 1 to "the lender," Defendant did not simultaneously present the Court with its FRCP 26(a)(1)(B)C "Exhibit 4: Debt Level Information Screen [LI09] and explanatory sheet," which shows: "ORIGINATING LENDER: 801178 B OF A TRUSTEE C/O CMSC," also appearing under the "CLAIMING LENDER AND ADDRESS," *part of the record for Defendant's claim* of an outstanding defaulted student loan against Plaintiff "supported" by Exhibit B. * * * Note's Paragraph X. *Transfer of Loan to New Holder*[1]), * * * does not make it admissible for Defendant's purposes.

[1] *See* Plaintiffs Motion to Extend Leave to Amend Complaint and attached Brief filed on July 2, 2001, *Enclosure 1 p. 3.*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
FRE# 106	The original agreement, only partially shown in Exhibit B, was to be interpreted under code and regulations expressly identified in its Paragraph XII *General* provisions[2], was subject to all other provisions of the promissory note, and depended on First Independent Trust's performance. All agreement terms, interpretive code and regulations, and documentation of alleged lender performance ought in fairness be considered contemporaneously with Exhibit B for it to be admissible as relevant *for Defendant's purposes.*
FRE# 403	Even if Exhibit B were relevant to Defendant's claim of a Bank of America-originated loan/default (see FRE#l04(a) grounds at quote from Defense FRCP 26(a)(1)(B)C Exhibit 4), without evidence that Plaintiff received any advance/incurred any obligation according to the terms of a promissory note, determinations about Defendant's collection activities and formal agency action against Plaintiff (Complaint ¶¶2-3) would not be addressed by Exhibit B' s contents. Exhibit B adds confusion to the issues, misleading away from the lack of evidence showing an obligation on Plaintiff s part that would be prerequisite to proving the validity of *the EDUC claim and Defendant's related actions / decisions;* so Exhibit B is not admissible *for Defendant's purposes.*
FRE# 901(a)	Introduction of Exhibit B (Brief, p. 4. #2, referencing the Navarro Decl. ¶17) is immediately followed by, and obviously implied as based upon First Independent Trust's promised performance/Plaintiff's resultant obligation, "Plain-

[2] *See* Plaintiff s Motion to Extend Leave to Amend Complaint and attached Brief filed on July 2, 200 I, *Enclosure 1 p. 3*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	tiff defaulted on his loan on April 15, 1987" (Brief, * * * p. 4 #3). * * *: Not only is there an absence of required lender documents/records to support a loan/default claim[3] from Exhibit B for Bank of America as originating lender (see FRE#104(a) grounds), but also the original promissory note's ¶ V Whole Loan Due, on the first day of non-payment (after 10 day's grace), as determined by its ¶2 Date Note Becomes Due, six months after Plaintiff stopped carrying at least one-half TTCI' s normal full-time workload (by Defendant's own Exhibit 2/F "attendance records" produced for this suit by the loan-originating school, which Plaintiff denies are true and correct) on September 23, 1985. This would set the alleged default date at 3/23/86. Upon required timely-lender-default-claim-filing within 90 days of default,[4] the resulting required timely payment within 90 days[5] would be (3/23/86 + 6 mo =) 9/23/86, not the "ORGCLMPAYDTE: 4/16/87" of Exhibit C. This "date guaranty claim paid" being the next day after Defendant charges Plaintiff defaulted cannot be read in either the Brief s "FACTS, A. Plaintiff's Loan," p. 4 #3, "...[t]hereafter, the lender requested payment from CSAC, which paid the lender.. ." or the identical phrasing from Exhibit 1, p. 7 #18). Even if reading the

[3] CSAC (state guarantor for EDUC claim against Plaintiff) shall maintain, among other records, by 34CFR682.414(a)(1)(ii)(A), "All documentation supporting the claim filed by the lender;" [=§682.51I (b), p. 723], "for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures," [§682.414(a)(2)].

[4] 34CFR682.406(a)(5), p. 679

[5] 34CFR682.406(a)(8), p. 679

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	lender's timely default-claim—filing to be within 90 days of 'the end of the 120 day[6] default period,' instead of "default," and allowing 30 days for rejection/re-filing with proper documentation,[7] a timely payment would have been on 2/23/87, not 4/16/87. The default claim was paid after CSAC recorded Bank of America's lender number, 801178, in the second entry (3/19/87)[8] of its "History;" which demonstrates it was not paid to the lender on Exhibit B. These discrepancies, raised by *Complaint* ¶21a, fail required authentication that Exhibit B is *evidence supporting the EDUC claim / Defendant's collection activities and final agency action against Plaintiff* precedent to its admissibility *for Defendant's purposes.*
FRE# 901 (b)(7)	Defendant initially disclosed Exhibit B as * * * 'A. Documents from Travel and Trade Career Institute' for Fed.R.Civ.P. 26(a)(1)(B). When introducing that Plaintiff signed a promissory note in "FACTS.. .A. Plaintiff' s Loan" of the Brief (p.4 #2), Defendant fails to make any connection between it and the school ("TTCI'), including the fact that the original of Exhibit B (and of Exhibit A, loan application) were completed, as part of enrollment, at TTCI's loan

[6] 1984 Edition, 34CFR682.200 at *Default:* "[t]he failure of a borrower to make an installment payment when due...provided that failure persists for-(a) 120 days for a loan repayable in monthly installments..."

[7] 34CFR682.406(a)(6), p. 679

[8] Defendant's Initial Disclosure, Rule 26(a)(I)(B)B "Documents from California Student Aid Commission: Exhibit I: Contact History Report dated December 31, 1992," a single page that chronologically begins: "022687...CON...ADR...1000...PO BOX 9821...LONG BEACH...CA 90410-21343263" followed immediately by "031987...252...LC...10l0...870316 801178 [emphasis added]."

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	origination[9] for Plaintiff, certifying his application (as an eligible student/borrower[10] falsely, unbeknownst to Plaintiff, and prohibited whether done willfully or negligently[11]) and submitting it to "a participating lender,"[12] that would appear from Exhibit B to have been First Independent Trust, but from Defendant's claim to have been Bank of America. * * * failure to promptly correct disclosure to the Court and Plaintiff of Fed.R. Civ .P. 26(a)(1)(B) A "Documents from Travel and Trade Career Institute... Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985," as not having come from TTCI, required by Rule 26(e), means that Exhibit B has not been authenticated as from the public office where items of this nature are recorded/filed, so is inadmissible * * *.

[9] 1984 Edition, 34CFR682.200, p. 479, at "(a) [a] school determines who will receive a loan and the amount of the loan; or (b) [t]he lender has the school verify the identity of the borrower or complete forms normally completed by the lender."

[10] Plaintiff did not receive his high school diploma until 1999—and did not realize that, or its equivalent, was prerequisite for academic eligibility in the FFEL programs (34CFR668.32(e), pp. 463-4); TTCI neither determined whether he had a high school diploma nor that his enrollment (not requiring a high school diploma/equivalent) in classes at a community college "beyond the high school level" prior to the 1984-5 school year (see Exhibit A, #12) did not meet the definition of a first academic year in a qualifying educational program (§600.2) to have waived applicable loan/subsidy limits [1982 Edition, 20USC: § 1075(a)(1)(A), p. 273 and §1078(b)(1)(A)(i), p. 282] and first-year student/borrower handling-including prerequisite commercial-lender denial of a loan [1982 Ed., 20USC1083(a)(1)(b), p. 306] and $1,500 single-disbursement limits [1982 Ed., §1078(b)(1)(A)(ii), p. 282].

[11] 34CFR682.609(a), p. 734

[12] 34CFR682.102(a), p. 591

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
FRE# 901(b) (8)(A)	Defendant's contradictory record of the EDUC claim originating lender being Bank of America (Exhibit C, lender #801178); the 24-hour borrower-default-to-guarantor-claim-payment span (Exhibit C, 04/15/87 and 04/16/87, respectively) attributed to alleged lender performance for Exhibit B—which default date is inconsistent with the original promissory note's terms (see FRE#901(a) grounds); omission of mentioning the school's role in originating Exhibit B in the Brief; and false/uncorrected disclosure as a document from TTCI, all fail to show it in such condition as to create no suspicion concerning its authenticity for the purposes of supporting the EDUC claim and Defendant's related actions/decisions.
FRE# 901(b) (8)(B)	See FRE#901(b)(8)(A) grounds herein. Exhibit B is not authenticated as from a place where a Federally-guaranteed and validly consummated promissory would likely be, so is inadmissible for the purposes of supporting the EDUC claim and Defendant's related actions/decisions.
FRE# 901 (b)(9)	* * * There has been no disclosure of Plaintiff's endorsement on a loan check either from First Independent Trust (Exhibit B) or from Bank of America (Exhibit C, lender #801178); * * *. CSAC is required to retain[13] the documents that must be attached to the lender's Claim for Reimbursement form (default-claim) filing[14] for five years after the loan is paid in full/written off;[15] but Defendant has never provided Plaintiff with evidence of the alleged

[13] 334CFR682.414(a)(I)(ii)(A), p. 702-3
[14] 34 CFR682.511(b)(1), p. 723
[15] 34CFR682.414(a)(2), p. 703

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	loan advance/default[16] (see Complaint ¶¶7, 10b, 11, 13, 15-20, 23/Exhibit H, 24/Exhibit I, 34/Exhibit K, and 37) and "is not in possession" of such (or any) lender documents for the EDUC claim.[17] Defendant has disclosed that *[cont'd....]*

[16] *Dated/mailed September 4, 2001,* Defendant's Answer to Plaintiffs Requests for Admissions (that was dated/mailed 7/27/01) for items #9 and #26 are set forth below:

9. Prior to Plaintiffs original 1/2001 filing with this Court in this matter, Defendant did receive disputes and objections from Plaintiff that included statements related to his attendance and withdrawal at the school, **his not having received the alleged loan, his not having received contact from the lender or state guarantor about a loan or default,** and his not having received verification of debt in response to his 1993 verbal and written responses to an initial demand re-ceived from Defendant at his California residence. [emphasis added. *Plaintiffs note: receipt of the initial demand in 1993 "at his Califor-nia residence" was the only instance of successful postal forwarding to his then-current address-not tihe one in Defendant's records that was used without change for the next 2.5 years.*] Answer: Admit.

26. Defendant recorded Plaintiff' s objections that the promissory note had not been executed because he had not received a loan from the lender, but Defendant did not provide other loan documents or records *in response to thhese objections.* Answer: Admit

[17] *Mailed June 29, 2001, incorporating General Objections (to the extent each request seeks information subject to the attorney client, work product doctrine or deliberative process privilege; producing all non-privileged responsive information and reserving the right to supplement in accordance with Fed.R.Civ.P.) without waiver in each specific response;* Defendant's Responses to Plaintiff's Interrogato-ries, dated 6/25/01, preceded by each request as identified, are set forth * * * Plaintiff Interrogatory #25 to Defendant on June 1. 2001: What evidence is or should have been available to Defendant demonstrating that the lender provided Plaintiff with a written statement of required disclosures at or prior to the beginning of the repayment period, including the scheduled dated the repayment period was to begin, the due date of the first installment and the number, amount and frequency of payments? RESPONSE NO. 25: Pursuant to 20 U.S.C. §1078(2)(E)(ii), the lender is required to notify the borrower of the date on which the repayment period begins. Under 20 USC

§1083, the lender is required to provide the borrower with an explanation of the terms of the loan and the terms of the repayment of the loan. See also 34 C.F.R. §682.205. Defendant is not in possession of any such documents.

Plaintiff Interrogatory #26 to Defendant on June 1. 2001: What evidence is or should have been available to Defendant demonstrating the lender's loan servicing, collection or due diligence activities with regard to the subject claim? RESPONSE NO. 27[sic]: Defendant may have been able to obtain such documents from the lender or guaranty agency when he first defaulted on the loan, however Defendant is not in possession of the lender's [C]laim for [R]eimbursement form which would have included its due diligence efforts.

Plaintiff Interrogatory #27 to Defendant on June 1.2001: Which, if any, of the following did the lender attach to the subject claim: a collection history; a copy of the final demand letter; originals or copies of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan-whether that correspondence involved the original lender, a subsequent holder, or a servicing agent; evidence, if applicable, of requests by the lender to ED for skip-tracing or preclaims assistance; and/or any additional records documenting the lender's right to have received payment of the guarantee for the subject claim? RESPONSE NO. 27: The lender's Claim for Reimbursement form typically includes a completed form including date and amount of disbursement of the loan, date repayment began, date of default, collection efforts including a log of telephone calls and letters sent and requests for skip-tracing or preclaims assistance, amount of principal and interest outstanding an any other documents that the lender may choose to attach.

*Also, dated/mailed September 7, 2001, incorporating General Objections * * * without waiver * * ** Defendant's Responses to Plaintiff's Interrogatories [** *] And Requests for Production of Documents; preceded by corresponding request as identified * * *:

Request # 1. A copy of Plaintiff's 6/21/85 required signature of endorsement, whether upon deposit in an account of his own or TTCI's, on the loan check allegedly advancing funds to him.

Response: Defendant is not in possession custody or control of any such document.

Request # 12. All extant lender documents and records, in reasonably legible condition, related to the EDUC claim against Plaintiff to which Defendant, as program authority, has access-whether or not previously sought from the lender by Defendant in relation to the EDUC claim against Plaintiff or to the matter before this Court-particularly those containing original writings and signatures, so that the information, authorizations or records they contain may be assessed for relevance to establishing the facts of the school's receipt

of the lender's advance of funds attributed as a loan to Plaintiff, of the lender's loan servicing and collection activities, and of the existence of the alleged debt and the validity of Defen-dant's claim against Plaintiff. Response: Defendant is not in possession. custody or control of any such document.

* * * *September 4, 2001, Defendant's* * * *Admissions* * *

Admission # 1. With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the alleged 6/21/85 loan disburse-ment showing Plaintiffs required endorsement in receipt of the alleged loan check. Answer: Admit that Defendant has not provided a copy of the endorsed loan check but has provided Plaintiff with numerous copies of his signed promissory note. * * *

Admission #2. With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the original receipt from the school at the time of the alleged 6/21/85 loan advance into the school's account purportedly on Plaintiffs behalf. Answer: Object to admission as unclear and ambiguous as to definition of "original receipt from the school." Subject to and without waiving this objection, admit that Defendant has not provided Plaintiff with a receipt of loan from school because no such receipt exists.

Admission #3. With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, any copies of written contract[sic] of any kind between the lender and Plaintiff either at the time of, or at any time following, the alleged 6/21/85 advance of loan funds, up to and including the 1987 lender's filing of a default claim. Answer. Deny. [* * *"written contact"* * *]

Admission #7. Prior to Plaintiffs original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him. Answer: Admit that, prior to this suit, Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant. * * *

Admission #8. Prior to Plaintiffs original 1/21001 filing with this Court in this matter, as far as verification of the debt either offered for Plaintiff's timely written disputes to certain demands or indicated as required by Plaintiff in writings to Defendant (or Defendant's agents), Defendant did not provide Plaintiff with a document or record show-ing evidence of the alleged 6/21/85 disbursement for the EDUC claim against him. Answer: Admit: Defendant provided Plaintiff with a copy of the promissory note. * * * *

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	[...cont.] that CSAC's system has been found: • to allow the guarantee of "loans" based on receipt of an application from a loan-originating school prior to and sometimes without subsequent lender approval/advance of the requested loan, • to allow third-party transfer of loans from one lender to another, and • to allow lender-override of cancelled unconsummated loan status.[18]

[18] **Under cover of September 10, 2001, letter to Plaintiff from Peter Krumholz, Assistant United States Attorney: "* * * Enclosed please find copies of the documents referenced in oor response to your interrogatory #43. Sincerely...;" the "bulleted" items in the main paragraph appear, in the same order as the three "findings" here below:**
Under cover of July 10, 1992, letter to Dr. Samuel M. Kipp, III, Executive Director, California Student Aid Commission, P.O. Box 510845, Sacramento, CA 94245-0845 from Linda M. Stoddard-Tsutsui, Chief, Guaranteed Student Loan Branch; April 2028, 1992 review report: FINDINGS AND REQUIRED ACTIONS:
Finding 1: Administrative Cost Allowance Receipt on Loans Prior to Lender Approval A participating school may transmit an application electronically to CSAC for guarantee prior to the lender's approval. If the lender never sends the application back to EDS, the loan is reported as an undisbursed loan and ultimately canceled. In this instance, Administrative Cost Allowance is paid on a "loan" when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school. Citation: 34 CFR 682.100 (b) (I); 34 CFR 682.407 Required Action: A guarantee agency guarantees lenders against losses. Thus, the agency may not receive Administrative Cost Allowance (ACA) on a loan on which it issues a "guarantee" unless the lender has decided to make the loan. The agency may receive ACA on a loan only when the lender has notified CSAC that the loan was accepted. In response to this 'report, the guarantee agency must detail the procedures which have been

adopted to assure that CSAC does not bill for ACA on loans before lenders accept those loans.

Finding 27: Current Holder Code: System Allows Third-party Transfers of Loans The EDS System allows the transfer of loans between two lenders by a third party (neither the buyer nor the seller). The decision not to place an edit in the system to prevent third-party transfers of loans between lenders was stated to have been made to accommodate servicers so that loans could be transferred on behalf of their clients. However, ED staff on site at Lender "A" actually transferred loans on the CSAC system from Lender "B" to Lender "C." (It must be noted that, after this process, the loans were transferred back to the correct holder so that servicing would not be affected.) Citation: 34 CFR 682.401(b)(10) Required Action: Procedures that will strengthen system security and that will disallow transfers of loans between two lenders by a third-party must be enacted. A descrip-tion of the new system controls, and a certification that the controls have been enacted and tested for reliability, must be submitted with the response to this report.

Under cover of June 10, 1994, letter to Mr. Michael Carona, Chairman, California Student Aid Commission, 1515 "S" St., Suite 500, P.O. Box 510845, Sacramento, CA 94245-0845 from Bonnie S. Gonzalez. Acting Chief, Guaranteed Student Loan Branch; 1/31-2/4, 217-2/11 & 2/14-2/18/94 interim report: FINDINGS AND REQUIREMENTS:

Finding 19: Excessive Collection of Administrative Cost Allowance It is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions. The Administrative Cost Allowance (ACA) paid to the agency by the Department is calculated by subtracting the unconsummated loans from the total loans guaranteed. Since ACA is not paid for unconsummated loans, the loan must be correctly identified as cancelled or unconsummated by the lender.

The Department is concerned that lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or unconsummated) is not keyed in by the lender, the Agency may receive ACA to which it is not entitled. Citation: 34 CFR 682.407 Required Action: The Agency must provide information as to the extent of this activity on the agency's complete loan portfolio. CSAC stated that these loans can be identified through use of the "Y" code in the "edit override" field. Upon receipt of documentation that will provide an accurate estimate of the extent of this issue, the Agency may be given further required action.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	Prior to this suit (see Complaint ¶¶25-33, inclusive), Plaintiff received one direct answer, "[y]ou state that you did not receive the funds from your student loan. The funds from student loans are frequently applied by schools to enrollment expenses... [s]tudents frequently do not directly receive the funds."[19] Defendant's postulations "[b]orrowers who have FFELP loans that were disbursed prior to [1/1/86] are, according to [Defendant's] policy, eligible for..."[20] and "...[Plaintiff] received the loans in-kind at least by attending the school.. .,"[21] as relating to a June, 1985 agreement/ loan, besides being based on the absence—or only recent "production"—of "evidence" to suggest that Plaintiff's 6/21/85 signature was not needed to transform his liability from 'to the school' into 'to a lender',[22] ignore 1984 Edition 34CFR682.401(b)(6)"(ii) [t]he borrower must personally endorse

[19] *Complaint-Exhibit-J,* p. 1 ¶5

[20] Brief, p. 2-3 at bottom/top

[21] Brief. p. 14 at bottom

[22] * * * September 7, 2001, *Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents*—without waiving general objections * * * and reserving the right to supplement production in accordance with the Fed.R.Civ.P.—for Plaintiffs Interrogatories #34-50 (* * *), interrogatory/answer for item #38 are set forth below:
Interrogatory #38. Plaintiff attended orientation modules for four calendar weeks before his 6/17/85 signature was required on the Note prerequisite to contemplation of loan approval; what shows his knowledge at the time, or within a similar 4 weeks, of the act alleged to have changed his legal standing for attending modules from direct liability to TTCI for tuition per US000007? [Motion to Strike Note: US000007 is FRCP 26(a)(1)(B)A Exhibit 6 TTCI School Enrollment Agreement signed on May 7, 1985 or subject Motion's Exhibit 2/A]
RESPONSE N0. 38: Defendant objects to this interrogatory as it seeks information regarding Plaintiff's knowledge. Defendant could not possibly assume what Plaintiffknew about his classes in 1985.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	the check and may not authorize anyone else to endorse it on his or her behalf. (iii) *Neither a lender nor a school* may obtain a borrower's power of attorney or other authorization *to endorse a check on behalf of a borrower* [emphasis added]," p. 492. Exhibit B is not authenticated/identified by process or system shown to accurately result in lender advances of "loans" if guaranteed by CSAC for applications from loan-originating schools, or in legitimate obligation of students because of "attendance records" and a *school's* receipt of funds. Thus, Exhibit B is inadmissible *for the purposes of supporting the EDUC claim and Defendant's related actions / decisions.*
FRE# 902(4)	Because it was initially disclosed by Defendant as a "from the school" and half its contents are illegible, Exhibit B is not certified/sealed as a correct copy, by the custodian of its original as a public record/official document authorized by law and actually filed in a public office. Not so self-authenticating, it is not admissible * * *.
FRE# 902(8)	Defendant has not presented a notarized acknowledgment by Plaintiff of consummation of the agreement proposed in Exhibit B, so it is not self-authenticating or admissible as such * * *
FRE# 902(9)	Plaintiff has consistently requested verification of, and * * * defense of lender default/non-consummation to, any obligation arising from the lender's alleged performance for the original agreement suggested by Exhibit B.[23] It is not self authenticating as commercial paper, to the extent of missing documents to answer lender

[23] *Complaint,* ¶¶7, l0b, 11-13, 15-20, 22a, 37, 23 & *Exhibit-H,* 24 & *Exhibit-I,* and 34 & *Exhibit-K*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	default * * * Uniform Commercial Code[24]). * * *
FRE# 1001(3)	Exhibit B is not an original or output readable by sight shown to reflect the original's data accurately, so is not admissible for Defendant.
FRE# 1001(4)	Exhibit B is not a duplicate/reproduction that accurately reproduces the original * * *.
FRE# 1003	Exhibit B is not a duplicate admissible for Defendant's purposes to same extent as its original because a genuine question is raised as to the authenticity of the original (demonstrating a loan originated by Bank of America, as Defendant's claim alleges) and in the circumstances it would be unfair to Plaintiff to admit it as such, in lieu of the original.
FRE# 1007	Failure to produce the original of Exhibit B is not accounted for by Plaintiff's testimony/ written admissions of having participated to a limited extent in enrollment/loan processing with TTCI, the loan-originating school, that would account for the existence of such agreement, without necessarily having resulted in a valid contract.
FRE# 902(11)	* * * Declarant Navarro is described as a Senior Loan Analyst in a branch of Defendant's offices "since [what date]"[25] with student loan litigation support duties not limited to 'providing back-

[24] UCC§3-305(1)(ii), as to nullification of obligation based on illegality of TTCI's receipt of funds * * * "on behalf of Plaintiff' under then-effective 1984 Edition 34CFR682.401 (b)(6)"(ii) -(iii), p. 492; UCC§3-305(1)(iii) fraud by TTCI in having given Plaintiff to understand his liability under the school enrollment contact was forgiven upon his tender of written withdrawal notice without disclosure of any alleged liability to any lender * * *

[25] Exhibit 1, p. 1 #1 at end of last sentence. Plaintiff asserts this goes to a lack of care in Mr. Navarro's filling out the general prepared portion of his "declaration," that may also be reflected in any other prepared/specific portions that follow.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**

ground information on the individual's loan history[26] and testimony to the actual case either in

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[26] "Individual's loan history," Navarro "provides background information on" under Specifics of Bruce Edward's FFELP Loan (Exhibit 1, pp. 6-11,##17-32, inclusive) is based * * *

- **solely on "records" Defendant created on or after May 25, 1993, for an alleged 6/21/85loan without any supporting documentation from any "originating lender" to answer the defense of lender default/non-consummation of a promissory note:** see *Defendant* * * *'s Initial Disclosures* Fed.R.Civ.P. 26(a)(1)(B)C...Documents from Education's Debt Management Collection System Database and the National Student Loan Data System (herein FRCP/C) [versus lack of disclosure of any lender documents/records, with a single exhibit under 26(a)(1)(B)B...Documents from California Student Aid Commission], and Exhibits C-H introduced as "evidence" to support Navarro's declaration, Exhibit 1...
  ...at p. 7 #18, Exhibit C is FRCP/C Exhibit 9
  ...at p. 7 #18, Exhibit D is falsely identified for CSAC (Calif. Student Aid Comm.) collections
  ...at p. 7 #20, Exhibit D is FRCP/C Exhibit 2
  ...at p. 8 #21, Exhibit E is FRCP/C Exhibit 1
  ...at p. 10#31, Exhibit Fis FRCP/C Exhibit 7
  ...at p. 1 1 #32, Exhibit G is FRCP/C Exhibit 6
  ...at p. 11 #32, Exhibit His FRCP/C Exhibit 5: but also...
  ...see also FOOTNOTE #17 herein above, especially second-to-last item, Admission/Answer#7. * * *
- **solely on the basis of "certification" by a State guarantor...:** addressed in discovery, by dated/mailed 9/7/01 *Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents*—without waiver of general objections * * *:
  Interrogatory #50. Does Defendant warrant that TTCI and all holders of the California Guaranteed Student Loan Program Promissory Note and Disclosure Statement signed by Plaintiff on June 17, 1985, timely complied with all terms of related written agreements and with all legal or regulatory requirements applicable to the claim against Plaintiff? RESPONSE NO. 50 TTCI was never a holder of Plaintiff's loan or promissory note. The contract between Plaintiff and TTCI is separate and distinct from his contract with the lender, First Independent Trust, or holder of his promissory note. *In accepting assignment of Plaintiff's loan, Defendant has accepted the information transmitted on the loan from the guaranty agency, including its assertion that it and the lender engaged in due diligent*

efforts to collect the defaulted loan and that it has otherwise abided by the terms of its agreement with Defendant, the Higher Education Act and its implementing regulations [emphasis added].

- **...a State guarantor whose single "record" disclosed in this case reveals it falsely certified its own required due diligence efforts for the EDUC claim:** This is revealed by comparison of applicable due diligence requirements to the data contained on the single-page, single exhibit of Defendant's FRCP 26(a)(1) (B)B disclosure (violations not necessarily limited to those described in the following): By 34 CfR 682.413(b)(1) CSAC had to comply with §682.406(a) to retain reinsur-ance. §682.406(a)(11) requires agency due diligence under §682.410(b) (6) or (7). §682.410(b)(6)(ii)(A) sets the claim payment (Exhibit C, CBOCCDATE: 04/16/87) as the beginning of required due diligence scheduling. Without any recorded activity between April 3 and June 18, 1987, CSAC violated §682.410(b)(6)(iii) and §(b)(7)(iii). With only two recorded activities between May 17 and October 13,1987, CSAC violated §682.410(b)(6)(iv) and §(b)(7)(iv). CSAC also violated §682.410(b)(6)(v) prohibition on collection activity "gaps" in excess of 60 days by recording 63 days of inactivity to 6/19/87 followed by a gap of l00 days to 9/28/87. Therefore, §682.406(a)(14) required certification for the EDUC claim relating to CSAC's own (and "the lender's"), diligent attempts to locate Plaintiffthrough use of reasonable skip-tracing techniques under §682.411(g) (which prohibits gaps over 45 days between attempts to contact individuals on the loan application) was falsely documented according to Defendant's disclosure; Defendant has never claimed to have obtained/vcrified "the lender" records and documents that are supposed to show its due diligence that was accepted under CSAC's false certification.
- **only otherwise supported by "school records" first and/or falsely produced for 4/26/01 Fed.R.Civ.P. 26(a)(I)(B)A "initial disclosure":** having more fully objected in motions to strike Exhibits 2 & 2/A-F in this matter, it is sufficient here to point out that Defendant never claimed to have records from the school contradicting Plaintiff s declarations related to attendance, withdrawal, not having endorsed any check, and not having been contacted by TTCI after the first day of class, when he wrote more formal letters, beginning in 1998, to elicit "'verification of debt" that was not forthcoming for simple written statements of dispute, as promised by various system letters from Defendant since 1993/1996 first and second initial demands. Not only did Defendant falsely attribute (and fail to correct that) copies of the loan application and promissory note were "from TTCI" in initial disclosures, but also *first produced and introduced* only "'Pell Grant checks" apparently supported by a school record card and a 5-page mixture of

handwritten/computer-formats for "attendance calculations" (so called in FRCP 26(a)(I)(B)A-Exhibit 8] that not only attribute activity to Plaintiff far beyond the first day of class he identified at least 3 years earlier as his last contact with TTCI, but also have no foundation in ED/RDS, Defendant's own Records Disposition Schedule, for existing so much beyond the normal date any of these (and all required, but somehow not also surviving) records would have been destroyed, considering Defendant had never required their production/preservation before Plaintiff filed suit. **That is to say, Navarro's 'background information' on 'the individual's loan history' related to the "Specifics of Bruce Edward's FFELP Loan" is not a loan history by an "originating lender" regularly supplemented by "other holders."**

* Plaintiff freely acknowledges participation/involvement in TTCI's enrollment/loan origination process up to the "first class, prior to the transfer of any funds" (see Complaint-Exhibit H @ 2). He did not identify "the first day of orientation" that Defendant wishes to ascribe to his statements [*but see* FRE#901(b)(9) grounds herein, at footnote for ".. .to suggest that Plaintiffs 6/21/85 signature was not needed to transform his liability from 'to the school' into 'to a lender'"], which he did not count as "class" [current regulations also exclude periods of orientation from "instructional time" ('class'), in 34CFR668.2(b) "Academic Year"(2)(iii)].

Plaintiff attended May 20-July 12 orientation modules on the strength of his enrollment contract with TTCI alone, demonstrably at least for a full month before TTCI secured his acknowledged June 17, 1985, signature on the promissory note for a loan then estimated to be disbursed on July 4, 1985 (recognizably July 8, after that holiday weekend)—one week before the first day of "class," Monday, July 15, 1985, —but, unbeknownst to him, the "loan" had been "disbursed" on 6/21/85 before TTCI's administrator told him on the first day of class, "all I needed was to submit my withdrawal in writing, which I did before leaving his office." At that time, under those circumstances, Plaintiff understood his liability to TTCI under the enrollment contact had been waived and that he had not incurred a loan liability to any lender which is at issue in this case. Where it would be unlikely that Plaintiff would have made/saved a copy of that written withdrawal from 1985 to date, that does not negate Defendant's burden to prove/verify that Plaintiff received a loan as alleged by the EDUC claim (nor can Defendant's lack of supporting documents/ records be forgiven as simply not having made/saved household records one didn't know one might need in the future.)

person or by submission of a declaration/affidavit."[27] Navarro claims familiarity with the variety of loans held/ collected by Defendant—how related information is received and records are created/maintained[28]--and access to both Defendant's electronic records/computer database records kept pursuant to relevant creation/ maintenance "at or near the time of' transaction /event—by/from "a person with knowledge of the transaction" in Defendant's regularly conducted administration of said loans,[29] and the national database on all such loans "derived from regular reports *** from the holders of the loans...based on *** regularly maintained[30]

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[27] Exhibit 1, pp. 1-2, #2(1) & (4)

[28] Exhibit 1, p. 2 #3(a)

[29] Exhibit 1, pp. 2-3, summarizing/quoting#4

[30] Navarro fails to advise the Court that, with respect to the general description of the National Student Loan Database System * * * **any and all NSLDS information specifically related to Defendant's claim under Plaintiff's name/identifies**[sic] (that is, those documents disclosed as US000086-89 under "FRCP/C Exhibit 13," Defendant's Fed.R.Civ.P. 26(a)(1)(B)C Documents from Education's Debt Management Collection System Database and the National Student Loan Data System) **were entered by Defendant and not by any other or prior "holders"** (see Defendant's * * * US000088, Data Provider Loan ID: G199309030022801, which matches both Exhibit C's "debt no: G199309030022801 date ent: 05/25/93" and Exhibit B's "claim no 1993090300228...05-25-93" sticker accepting the promissory note/claim). Contrary to Navarro's implication by general description that the prior "holders" for the EDUC claim—apparently First Independent Trust/Bank of America and CSAC—regularly contributed to this individual record, the only entries *not* showing a 198S date (besides Plaintiff's date of birth) are 9/22/00 Outstanding Principal Balance and Outstanding Interest entries (US000088), 9/16/00 Status Change entry and, ***as the entire*** *Guaranty Agency / Lender / Servicer Agent History:* Start: 05/25/1993 End: Current Code: 555 Name: FFEL assigned to ED (US000089). * * *

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	records..."[31] Navarro claims familiarity/access of Defendant/prior holder defaulted student loan records including non-electronic documents: "application and promissory note,[32] guaranty claim,[33] correspondence,[34]

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[31] Exhibit 1, p. 3 #5

[32] Exhibit B introduction through Exhibit 1, then, implies Navarro's familiarity with and access to Exhibit's A and B as nonelectronic documents suitable to have met his responsibilities/litigation support in this instance: for his expressed/implied background information on Plaintiff's "loan history," as the basis for preparing responses to discovery requests, especially responses to interrogatories and requests for production of documents in relation to this case, and for his testimony to this case by submission of his declaration/affidavit (Exhibit 1). *But see* the actual Exhibit B (and A) currently subject to this Court's determinations as to pending motions to strike them upon Defendant's entering them into evidence.

[33] Exhibit B introduction through Exhibit 1, then, implies Navarro's familiarity with and access to non-electronic documents of a guaranty claim for the alleged defaulted student loan attributed to Plaintiff. However, during discovery in this suit, Defendant advised a lack of possession of lender documents/Claim for Reimbursement, admitted to not having preserved and not currently possessing, and failed to produce any such lender claim documents, as set forth in discovery described in footnote #17 above. Also, Defendant's Fed.R.Civ.P. Rule 26(a) disclosure does not include a single document originated by an originating lender.

[34] ***With respect to correspondence between Plaintiff and an originating lender:*** see both footnote #17 above and Complaint l4b; Plaintif was not in direct contact with a lender regarding the EDUC claim at any time (even during TTCI's loan origination * * *). ***With respect to "correspondence between" Plaintiff and CSAC:*** notwithstanding the US000014 "Contact History Report" that Defendant failed to provide this Court (* * * see footnote #26 here above), Plaintiff did not *receive any* of the "contact" CSAC shows * * *: Plaintiff's Interrogatory #23 * * *: Which items, if any, in Defendant's disclosure document US000014 show Plaintiff's receipt of, or Plaintiff's response to, any mailing or telephoning-as distinguished from being a record of CSAC's initiation of mailing or telephoning that may or may not have resulted in a completed connection with Plaintiff? RESPONSE NO. 23: The Contact History Report provided

by CSAC is created and maintained by CSAC and is not a document that Defendant is familiar with nor is the copy provided very clear. Therefore, Defendant cannot definitively determine if there are any notations showing Plaintiff's receipt of or response to mailing or telephone call; CSAC may maintain another record, similar to Defendant's L102 Collector Note Pad, that shows telephone calls and mailings from Plaintiff. *[* * * Note: Defendant did not produce "another record, similar to Defendant's L102 Collector Note Pad.]*
Plaintiff's Interrogatory #24 * * *: On Defendant's disclosure US000014, do the records described as "BAD ADDRESS" dated 12/27/90, 10/07191 and 11/20/91 refer to and define the immediately previous address description of "623 E BROADWAY 1 LONG BEACH CA90802" on 9/17190? RESPONSE NO. 24: As stated in response to interrogatory number 23, this Contact History Report is CSAC's document. Defendant is not familiar with the specifics of this document and thus is unable to definitively answer this interrogatory. [* * * Answer to Plaintiff's Complaint..."14.(b), "...Deny that Plantiff did not receive notice from the guaranty agency; records from the California Student Aid Commission indicate that notices and demands for payment were sent to Plaintiff as early as February 26, 1987." * * *
Admission #4. Defendant does not have, and has not provided to Plaintiff, any copies of written communication between the [CSAC] and Plaintiff to demonstrate successful contact by the state guarantor with Plaintiff at any time. Answer: Admit that Defendant has only provided Plaintiff with a "Contact History Report" but not actually written collection letters or other written communications.
Reason to amend Answer to Admission 4: * * *
Admission #9. Prior to Plaintiff's original 1/2001 filing with this Court in this matter, Defendant did receive disputes and objections from Plaintiff that included statements related to his attendance and withdrawal at the school, his not having received the alleged loan, his not having received contact from the lender or state guarantor about a loan or default, and his not having received verification of debt in response to his 1993 verbal and written responses to an initial demand received from Defendant at his California residence. Answer: Admit.
Admission #20. Defendant did not advise Plaintiff of any investigation based on his dispute to having received the alleged loan, or make any inquiry of Plaintiff regarding details of his involvement with TTCI outside offering to accept Plaintiff's application to discharge an existing loan in response to his 1997 request for review. Answer: Object to this admission as including multiple statements. Subject to and without waiving this objection, deny first statement regarding investigation because there was not investiga-

tion; admit that Plaintiff offered the details of his involvement with TTCI, prompting Defendant's staff to send him the discharge applications and negating the need for further inquiry. * * * Admission #23. Defendant had access to the information that the state guarantor, CSAC, filed the default claim against Plaintiff, not under the last known address for Plaintiff, but under an address appearing previously to his last known address. Answer: Deny.

- * * * September 7, 2001, *Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents / Answers to Requests for Production of Documents* * * * set forth here: Request #24. A document or documents containing explanations or descriptions of column headings, data labels, codes and abbreviations that are not self-explanatory or otherwise accompanied by keys, legends, related instruc-tions or explanatory texts in Defendant's disclosure materials to Plaintiff, as data given without the means to understand it does not seem to be fair disclosure, such as for the following appearances in materials Plaintiff has received thus far:... [] c) US000014 CSAC Contact History Report: [] for all abbreviations under "CLK," "CD" (or "CO"?) and "INDX" columns; [] as well as "DESCRIPTIONS" content for the following dates: 3/19/87, 4/2/87, 6/19/87, 10/3 & 10/13/88, 3/31/89, 4/30/90, 12/27/90, 9/29 & 9/30/92 and 12/2 & 12/8/92. Response: Defendant is not in possession, custody or control of any documents that pertain to (a)-(d)... * * *[plaintiff's note]

Plaintiff's Interrogatory #4 to Defendant on June 1. 2001: What were ED's responsibilities with regard to locating and ensuring contact with Plaintiff upon having accepted the default claim against him, and where are these responsibilities published in written form? RESPONSE NO. 4: Education has no affirmative duty to locate a borrower, rather the borrower is required to notify the holder of its loan of his or her current address. See 20 U.S.C. §1078(b)(1)(P). In the interest of collecting the debt, Education will use all available means to locate a defaulted borrower. * * * [plaintiff's note] Plaintiff's Requests for Admissions #24: Defendant had possession of Plaintiff s California driver's license number, but did not locate Plaintiff through the Depart-ment of Motor Vehicles between Defendant's 5/93 acceptance of the claim against him and Plaintiff's 11/94 relocation to Colorado. Answer: Admit. Defendant uses Social Security Numbers to conduct skip traces on borrowers, not driver's license numbers. [Reaon to amend Answer to Admission 24: * * * Plaintiff's Request forAdmissions #5: With regard to keeping a record of correspondence from an individual, a notation only of having received a letter does not preserve any details of comments or requests made in that correspondence. Answer: Admit

payment records,[35] and other records that

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[35] Defendant admits only having sent copies (of quality similar to Exhibit B) of the promissory note to Plaintiff as "verification" of debt prior to this suit; and has been supremely unconcerned that Plaintiff did not receive more than one loan/default communication prior to 1996 (and that was Defendant's own in 1993)—because Defendant has "records" of CSAC and Defendant "sending" letters to Plaintiff since 1987, but doesn't even claim to have lender records of communication before that. Collection by any entity of any voluntary payment by Plaintiff—as ***first/only*** claimed in Defendant's Summary Judgment/Dismissal Brief (at p. 5 #4, referencing Exhibit 1 ¶18), "CSAC was able to collect $211.85 from Plaintiff prior to the Department of Education taking assignment of the loan on May 25, 1993"—at any time is denied by Plaintiff (who did not receive contact from CSAC at all) and Defendant's new allegation is suspicious for several reasons (one may note that Plaintiff thought the disclosure of that same amount (on Exhibit C "AMTCOLBYGA: 211.85") pertained to some fees collected by CSAC from Defendant, and one should note that there is no related "paid" date following that entry, "LASTPDGA: ___"):

- Defendant did not send evidence of such alleged $211.85 payment from Plaintiff to CSAC, as prior acknowledgment, and therefor verification, of debt in response to Plaintiff's requests for verification between 1993 and filing suit in 2001.
- Defendant has not produced a document to evidence such alleged payment from Plaintiff to CSAC.
- A CSAC "payment history" resulting from, and showing record of ,such alleged $211.85 payment by Plaintiff was not part of Defendant's Fed.R.Civ.P.Rule26(a)(1)(B)B Documents from California Student Aid Commission initial disclosures
- Such $211.85 payment from Plaintiff is not recorded anywhere on the single-page Fed.R.Civ.P.Rule 26(a)(1)(B)B Documents from California Student Aid Commission "Contact History Report dated December 31, 1993"—which only records dollar amoutns 3 times: on 10/03/88/$2,666.94, on 3/31/89/$2,666.94, and on 4/30/90 ($2,666.94)?
- Discovery in this suit includes requested admission, "21. Defendant was aware that Plaintiff has not made any voluntary payment for the alleged loan at the time of accepting the default claim against him. Answer: Admit" as asked by Plaintiff on July 27, 2001, and answered by Defendant on September 4, 2001—prior to the Brief's October 1, 2001, introducing this allegation to Plaintiff when submtiting Exhibit B * * *

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	evidence transactions between the borrower and the holders[36] of [his] loan, including [Defendant] and the originallender,[37] and, for guaranteed loans, the loan guarantor.. ."[38]

[36] The Navarro declaration, that introduces Exhibit B (et al.) under the umbrella of litigation support/experience that, by general mention, implies the existence of such supporting materials for the EDUC claim, fails to advise in Specifics of Bruce Edward's FFELP Loan, pp. 6-11, ##17-32, the lack of those required records for the EDUC claim that should evidence transactions between Plaintiff and "the holders" during the period before Defendant accepted assignment of the claim on May 25, 1993: * * *

[37] By using the singular noun, "the original lender," in this general introduction (Exhibit 1, p. 3, #6 at second-to-last line), and the most obviously coordinated identification of the bank shown on Exhibit B, "First Independent Trust," as "the lender" meant by all following references, both in the Brief ("FACTS...A. Plaintiff's Loan...#2 at last sentence and until the end of the Brief) and in Exhibit 1 (p. 7, #17 at last sentence and until the end of Exhibit 1), Exhibit B is offered to this Court as evidence supporting the **Brief's Argument "B. Plaintiff Has Failed to Show a Genuine Issue of Material Fact, and Defendant Is Therefore Entitled to Summary Judgment As a Matter of Law," without once meutioning "iender #801178"** that is the **only lender number shown** (as the second entry, 3/19/87) on CSAC's Contact History Report dated December 31, 1992 (Defendant's Fed.R.Civ.P. 26(a)(1)(B)B-Exhibit 1), **the only lender** on the NSLDS Loan History (p. 2; disclosed as US000087 under Defendant's Fed.R.Civ.P. 26(a)(1)(B)C-Exhibit 13), and the **originating lender: 801178 B of A Trustee c/o CMSC**, as well as the claiming lender (disclosed as US000071 under Defendant's Fed.R.Civ.P. 26(a)(1)(B)C-Exhibit 4) for Defendant's EDUC claim against Plaintiff—***which is a genuine issue of material fact, since the lender, First Independent Trust (see Exhibit B, for example) for which Defendant cannot answer Plaintiff's defense of default/non-consummation of the 1985 promissory note agreement that Defendant purports to be enforcing, is not the originating/claiming lender, Bank of America #801178, of Defendant's records—supported by previously undeclared "documents and information" that would not normally survive program disposition regulations, and were "produced" in 2001 as indirect "'evidence" for this suit.***

[38] Exhibit 1, p. 3 #6

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	Exhibit B/Exhibit 1 provenance/ credentials are thus falsely implied to be legitimate basis for Defense/Brief representations as to contents and meaning (but see footnotes for above ¶, directly related to the EDUC claim against Plaintiff not addressed in the Brief/Exhibit l' s self- described general information about "relevant" records); Exhibit B is not relevant/admissible under this Federal Rules of Evidence #902(11). Not only is Exhibit B (introduced into evidence through Exhibit 1) not a self-authenticating certified domestic record of regularly conducted activity (A) made at/near the time of occurrence of the matters set forth by/information of a person with knowledge of those matters, (B) kept in the course of the regularly conducted activity; and (C) maintained by the regularly conducted activity as a regular practice, but also, *Defendant failed to provide Plaintiff the prerequisite written notice of the intention to introduce it as evidence through Exhibit 1, and to make that declaration available for Plaintiffs inspection sufficiently in advance of such offering into evidence to provide fair opportunity for his challenge;* so. Exhibit B is inadmissible *as to Defendant's purposes.*
FRCP# 37(c)(1)	Defendant failed to correct initial disclosure of Exhibit B as not from TTCI, required by Fed.R.Civ.P 26(e)(1), without substantial justification, compounded by Defendant's failure to identify, to the Court, TTCI's status as lender's agent/loan-originator (interested party/fiduciary to all other participants) in the creation/signing of Exhibit B's original. Also, Defendant failed to signify, to the Court, that First Independent Trust on Exhibit B *is not the*

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**
	lending institution that submitted the default claim as originating lender. These failures are not harmless, therefor Exhibit B/the promissory note Plaintiff signed 6/17/85 should not be permitted to be used *by Defendant* at a trial or hearing, or on a motion.
FRCP# 56(e)	Exhibit B is lacking the "parts" of that agreement demonstrating its valid consummation to meet Plaintiff s defense of lender default, or to prove any obligation to Bank of America arose from it on Plaintiff s part (including that of reporting his address to a "holder"). Thus, it is not a promissory note supporting the EDUC claim against Plaintiff suggested by being offered in the Brief through Exhibit 1—neither of which mentions First Independent Trust *is not that* originating/claiming lender. so is not admissible *for Defendant's purposes* to support such affidavits.
FRCP# 56(g)	Exhibit B was submitted in bad faith as support of Defendant's claim against Plaintiff for the originating lender, Bank of America, both by Exhibit 1 and its covering Brief, so is inadmissible *for Defendant.*

Grounds to RESTRICT corresponding initial disclosure of Defense Fed.R.Civ.P. (12)(a)(1)(B)A "Exhibit 2.. ." as Defense Presented, Without Inference between 6/17/85 and 4/28/01

Plaintiff's participation in enrollment and loan origination at TTCI is not in dispute, but the duration and the results of his involvement with TTCI are. Based on that and the foregoing Federal Rules of Evidence/Civil Procedure objection grounds and Exhibit B's condition, content and initial disclosure receipt by Plaintiff on April 28, 2001, (in similar condition, as Defendant's

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**

Fed.R.Civ.P. 26(a)(1)(B)" A. Documents from Travel and Trade Career Institute/Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985," BOTH parties share only the following knowledge:

- Plaintiff signed a promissory note with more terms and conditions that appear in Exhibit B, at TTCI on June 17, 1985;
- Exhibit B and Defendant's Fed.R.Civ.P. 26(a)(1)(B)A/Exhibit 2 are believably copies, legible on the front/illegible on the reverse, of a 1985 promissory note Plaintiff signed, but cannot be deemed evidentiary copies of any legal contract;
- Defendant sent copies similar to Exhibit B to Plaintiff from mid-1996, and at various subsequent times, as "verification" of the EDUC claim;
- the legible writing and printing on the front/first page of Exhibit B, and the CSAC endorsement to Defendant on the back/second page, reflect what Defendant provided to Plaintiff prior to his filing suit and to the Court since the initiation of this suit, and contain only a portion of a proposed agreement, but not the entire writing nor any demonstration of the lender's performance prerequisite to any obligation on Plaintiff's part for having signed the original agreement ("Note");
- Defendant's disclosures and entering into evidence of Exhibit B/Note were made with express or implied representations about the validity of the original as a contract under which Plaintiff was obligated in some way connected to Defendant's claim against him, to promote presumptions about Plaintiff, TTCI, "the lender," CSAC, and Defendant performances subsequent to its signing; and

- on June 6, 2001, by forwarded copy of internal Defense counsel letter with 2-page attachment, Plaintiff received the first/only legible copy of the entire disputed Note (subsequently submitted to this Court as Enclosure 1 (3 pp.), Plaintiff's Motion to Extend Leave to Amend Complaint and attached Brief filed on July 2, 2001)

First provision of a legible copy of subject promissory note to Plaintiff six months after this suit was filed, and failure to submit such legible copy to the Court as Exhibit B:

- contradicted all previous failures to send legible copies of the note's reverse side as "verification of debt" (particularly after express written requests: Complaint-Exhibit-K: 11/11/99-¶2,12/10/99-¶2, 12/17/99-¶3, 1/21/00-¶1, 1/28/00-¶1 & Complaint¶33);
- still failed to fulfill Plaintiff's requests for a document showing his signature of endorsement on a loan check showing his receipt of a loan or the alleged disbursement according to the terms of subject promissory note after he received Exhibit B-like copies as "verification of debt," (Complaint: ¶7, 10b, 11-13, 15-20,22, 22a, 23/Exhibit-H, 24/Exhibit-I, 34/Exhibit-K, 37); and, so, was not a valid response to this Court's permission at the May 17th Scheduling Conference in this matter, for Plaintiff to seek to extend leave to amend the Complaint contingent on his failure to receive loan check endorsement or disbursement signature disclosure related to the EDUC claim;
- was not a Fed.R.Civ.P. 26(e) required correction of 26(a)(1)(B)A Exhibit 2; and

- was not repeated for Defendant's Summary-Judgment/Dismissal Motion's Exhibit B (unless the Court's version is greatly more clear that Plaintiff's).

In the limited context as described here above, both the illegible and the legible copies of subject promissory note are admissible for Plaintiff's purposes, including, but not limited to:

- demonstrating their quality and legible contents prior to this suit, as "evidence" in this matter, and as they were actually available from Defendant;
- demonstrating inclusion in "school records" that Plaintiff first received on April 28, 2001, (as against his previously undisputed declarations[39] based on recollection of limited involvement with TTCI) "demonstrating" a more complete/authentic school record to "support" the EDUC claim than existed (see "Defendant U.S. Department of Education's Initial Disclosures, II. SECTION (a)(1)(B) DISCLOSURES:, A. Documents from Travel and Trade Career Institute:, Exhibits 1-8-first introduced only days prior to required May 3, 2001, settlement statement production by order of this Court;
- demonstrating possible impact of such false inclusion in Defendant's introduction of "school" documents, described above, on Plaintiffs good-faith settlement statement concession on May 3, 2001, that if Defendant does have evidence proving a claim Plaintiff had no record, recollection, or belief of incurring, Plaintiff should include its payment in any settlement for his cause of action-including likely impressions given the Court both by inducing such concession (albeit lacking any claim of recollection

[39] See Complaint 7, 12, 13, 15-20,22, 22a, 37,23 & Exhibit-H, 24& Exhibit-I, and 34 & Exhibit-K.

* * * RULE:	**GROUNDS to Strike EXHIBIT B: "Promissory Note...signed on June 17, 1985"**

matching the "school records," only acknowledging that Plaintiff's memory might be faulty) of which all but a specified part carried a release for Magistrate Judge Watanabe to disclose, and by the false "authenticity" lent "disclosure from the school" to the Court, that might encourage detrimental or adverse reception of Plaintiff s side in this suit;

- demonstrating the withholding of relevant terms of Plaintiff's agreement with First Independent Trust, including (but not limited to) interpretive code and regulations; but
- not demonstrating the consummation of the promissory note according to its express terms, applicable code and regulations, and authentic supporting documentation.

Respectfully submitted in its entirety, including footnotes following, as signed and dated below:

s/*Bruce Edwards* — *10.22.01*
Bruce Edwards, — Date
Plaintiff, pro se
1001 Emporia Street,
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

* **NOTE: Unless otherwise indicated, all citations herein refer to CFR Revised as of July 1, 1999, or USC Revised as of January 6, 1999, upon which Plaintiff mainly relied in developing his Complaint**—before 6/6/01 receipt of the first legible copy of the reverse side of the Note (Exhibit B) on which Paragraph XII identifies interpretive code/regulations.

#69 Response (mtn. to compel) 10/30/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court District of Colorado BB
2001 OCT 30 PM 1:33 James R. Manspeaker Clerk by s/JC Dep. Clk}

Civil Number: 01-BB-36
BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

***RESPONSE TO PLAINTIFF'S "MOTION FOR PRODUCTION OF COMPLETE AND LEGIBLE DOCUMENTS"

Defendant United States Department of Education ("Defendant"), by and through United States Attorney John W. Suthers and Assistant United States Attorney Peter Krumholz, hereby responds as follows to Plaintiffs "Motion for Production of Complete and Legible Documents."

1. Plaintiff Bruce Edwards ("Plaintiff") filed a motion pursuant to Fed. R. Civ. P. 37 on October 3, 2001. Plaintiff contends in the motion that Defendant produced several documents that are incomplete under F ed. R. Civ. P. 37(a)(3), including:

a. Application for California Guaranteed Student Loan signed May 6, 1985;
b. Three receipts for Pell grant checks signed in August and October 1985;
c. Student Enrollment Agreement signed on May 7, 1985; and
d. Contact History Report dated December 31, 1992.

2. Plaintiff ignores the fact that five of the documents of which he complains are more than 16 years old. It should not be surprising that the image quality of documents pertaining to a loan signed for in May 1985 is less than crystal clear.

3. More importantly, however, all six of the documents of which Plaintiff complains originally came from

entities other than Defendant. As Plaintiff concedes, each of the documents came from the files of either the Travel and Trade Career Institute, the school for which Plaintiff took the loan, or the California Student Aid Commission, which guaranteed the loan. *See* Plaintiff's Motion, 1. Defendant duly produced those documents pertaining to Plaintiff's loan which were in its possession, custody or control. Having done so, Defendant fulfilled its obligation under Rule 26. *See* Fed. R. Civ. P. 26(a)(1)(B).

4. Finally, Plaintiff's motion is an attempt to make a substantive legal argument in the guise of a discovery motion. For example, Plaintiff contends that the Pell grant check receipts "are illegible as to the identity of the bank on which they are drawn." Plaintiff's Motion, 7. From that observation, Plaintiff concludes that the receipts are

> incomplete with respect to establishing authenticity, genuineness and relevance to the EDUC claim for such check receipts from TTCI demonstrating its acceptance of a grant purportedly made to Plaintiff after the first day ofclass that he identified, more than once since 1998 without dispute from Defendant, as the date he withdrew from enrollment without further contact with the school.

Id. In other words, from the fact that the bank name on the receipts is unclear, Plaintiff leaps to the self-serving conclusion that they cannot possibly stand for what they indicate on their face: that Plaintiff received and signed for each Pell grant check on the dates indicated on each receipt.[1] Plaintiff has made similar arguments to such

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[1] In addition, it is not true that Defendant has never disputed that he withdrew from enrollment after the first day of class. As Defendant indicated in its summary judgment papers, the school's computerized records indicate that he attended the school from May 20, 1985 until November 11, 1985. Memorandum Brief in Support of Motion for Summary Judgment at 5, 6 (filed Oct. 1, 2001).

damaging documents in other pleadings. *See, e.g.* Fed. R. Civ. P. 12(f) Motion to Strike as Inadmissible to Defendant, etc. (filed Oct. 19, 2001). A motion under Rule 37 is not the appropriate place for such arguments.

5. For the foregoing reasons, Defendant respectfully submits that Plaintiff's motion should be denied.

Dated this 30th day of October, 2001.

Respectfully Submitted,

JOHN W. SUTHERS
United States Attorney

s/*Peter Krmholz*
Peter Krumholz
Assistant United States Attorney
1225 Seventeenth St., Suite 700 Denver, CO 80202
(303) 454-0100

#76 Response (dispositive motion) 11/20/01

{Filed United States District Court *BB*
11-20-01 6 PM s/*KH*}

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01 BB 36

BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Plaintiff pro se hereby files this Response in Opposition to the Motion to Dismiss filed by Defendant on October 1,2001. Def. motion materials are referenced herein as: the "Motion" or "Mot.", the "Brief' or "Br.", and exhibits "Ex. [1-2]", "Ex. [A-H]", and/or "Ex. [2A-2F]." Original Complaint exhibits are referenced as "Compl-Ex-[A-M]." Each page enclosed with this Opposing Brief is consecutively numbered, as BE001...BE017 ...etc.; any reference herein to those numbered pages will include the ENCLOSURE NUMBER (i.e., BE001[ENCL] 1 or BE017[ENCL] 3).

ARGUMENT I Defendant's rejection of Plaintiff's administrative claim was neither arbitrary, capricious nor an abuse of discretion **(Br. p. 9 ¶2 at heading).**

See 34 CFR 30.33, *What procedures does the Secretary follow for IRS tax refund offsets?* which modifies §30.20-30.28 of "regulations governing the collection of student loans by administrative offset" 34 C.F.R. §§ 30.20 -30.31" (Br. p. 3, last¶).

ISSUE 1: "On September 21, 1993 [Defendant] began sending Plaintiff notices that it would refer his debt for collection by offset through TOP; the same notice was sent every year until September 5, 1997. [Navarro Decl.], ¶24" (Br. p. 7 #17). Navarro identifies Ex. D/letter type "N18" as the record of this annual mailing "to Plaintiff;" this shows a single instance of compliance with 34 CFR 30.33(b)(3)(ii) in Defendant's records:

- 09/21/93, 09/02/94, and 09/07/95 "N18" notices are recorded in the far right column as "U" (indicates a letter returned undeliverable). Plaintiff obviously did not receive these notices.
- 8/18/96 "N18" letter was sent to a 623 E Broadway (California) address. It was not returned undeliverable ("U") or received by Plaintiff because, "[f]inally, on January 17, 1996 [Defendant] obtained a different address in Colorado," (Br. p. 6 #12) where 11 system letters had been sent (Ex. D) and from where Plaintiff had already responded (Ex. E, i.e. 6/25/96).

The sole "N18" notice sent to Plaintiff in the same State as his residence and not recorded as "U" was sent on 9/5/97 (Ex. D).

ISSUE 2: "Since Plaintiff did not raise this objection until nearly three years after the September 5, 1997 notification, it was untimely...and because Plaintiff failed to respond in a timely manner, [Defendant] had properly referred his debt to Treasury for collection by TOP, and the resulting offset of his federal benefits was valid," (Br. p.13 ¶2 at beginning 2nd/ending 3rd sentence); but, Ex. E shows Plaintiff's 10/16/97 filing under 34 CFR 30.33(b)(4) & (d)(1):

Discovery/Admission: Pl. request #20, "Defendant did not advise Plaintiff of any investigation based on his dispute to having received the alleged loan, or make any inquiry of Plaintiff regarding details of his involvement with TTCI outside offering to accept Plaintiff's application to discharge an existing loan in response to his 1997 request for review;" *Def. answer,* "Object to this admission as including multiple statements. Subject to and without waiving this obection, deny first statement regarding investigation because there was no investigation; admit that Plaintiff offered the details of his involvement with TTCI, prompting Defendant's staff to send him the discharge applications and negating the need for further inquiry."

Discovery/Production: Pl. request #16, "Complete and legible copies of all hard-copy records from Defendant's Hearings Branch related to Plaintiff's 1997 request for review form submission, including initial, intermediate and final notations, findings and reports, through the ultimate rejection of the request or final determination of the review thus sought;" *Def. response,* "*See* US00015-25. Defendant does not have possession, custody or control of any other documents that satisfy this request."

1. Submitted by Ex. 1 p. 8 #21 as Brief evidence, Exhibit E "all activity on [Plaintiff's] account (except that it does not record the letters that are sent to the borrower as on the L106 Screen)" is the L102 Screen originally produced as US000015-25 (enclosed as BE001-11[ENCL] 1) for Def. Initial Disclosures list (BE012-16[ENCL] 2): Fed.R.Civ.P. 26(a)(1)(B)C "Exhibit 1: Collector Note Pad [L102]," but with 12 less half-pages and considerably less entries of Plaintiff's objections that the original disclosure (See BE00 1-11[ENCL] 1).
2. Hearings Branch record (See BE008[ENCL] 1) was: 10/16/97 filing, 10/20/97 internal request for note, 10/30/97 S.Amey receipt of request/response, and 04/03/98 receipt of [Compl-Ex-H].
3. Compl-Ex-E, *To Object in Writing to Collection of Debt,* pp. 1-2 bottom/top

- required written request for review by 65 days from Debt Statement date = due 11/9/97
- provided a Request for Review form blank[ENCL] 3 ("Form") for valid statement of objections

4. Compl-Ex-G p. 1 ¶3 confirms Pl. indicated Part II #12 (BE018[ENCL] 3) on the Form:
   - the Form did not require enclosure of any document for valid filing of selection #12
   - #12, "I believe" did not allege known fact, but personal conclusion based on Def. actions
   - #12 logically contested loan check endorsement (See Compl. #7, 10b, 11-13, 15-20
5. Compl-Ex-G p. 1 ¶2 confirms Pl. indicated Part II #10 (BE018[ENCL] 3) on the Form:
   - the Form did not require enclosure of any document for valid filing of that selection
   - Comp-Ex-E, Objections You May Raise... " p. 1 introduced lack of diploma/GED as valid
   - #10 "improperly *determined*" indicated misjudgment, not *"certified"* per Compl-Ex G.
6. Form (BE018[ENCL] 3) Part IV was a required sworn statement filed under penalty of perjury.
7. Pl. received a call after filing his review request (Compl. #22a), he believed this was to ask additional information (Form Part II end note, BE018[ENCL] 3); Defendant denies (Ans. #22a).
8. In reference to Compl-Ex G-1 & -2, Hearings Branch Sr. Loan Analyst 10/30/97 letter:
   - Introduction states it is "in response to the request for review form you returned..." (Compl-Ex-G-1, ¶1), not notice of 34 CFR 30.24(e) decision about evidence relevant to 34 CFR 30.33(b)(3)(ii) issues of existence (BE018[ENCL] 3 #12) or enforceability (ibid. #10).
   - ¶2 & 3 state insufficient information for loan discharge and department requires sworn statement of applicants; not that Form Part IV (BE018[ENCL] 3) was insufficient for review
   - ¶2 & 3 discharge criteria: "Federal Family Education Loans received after [1/1/86]"

- No applicability to unconsummated loans or to alleged 6/21/85 (Ex. C) disbursement
- p. 2 ¶1, "This notice applies only to those loans currently held by [Defendant]."
- excluded the claim against Plaintiff; Def. holds an unconsummated note, not a loan
- p. 2 ¶2, "collection efforts will continue," but not "requested review is hereby cancelled"
- Requiring an application/sworn acknowledgment of debt, as the sole reply to filing of an administrative request, contradicts the right to contest/review of existence/enforceability
- 10/30/97 letter did not require payment on 11/6/97, as for a decision, 34 CFR 30.33(f)(1)
- On subsequent failure to receive review decision, Plaintiff approached Hearings Branch directly (Compl.-Ex-H) and indirectly (Compl-Ex-I-l); Hearings Branch did not reply.

9. Def. argues 11/12/98 reply [Compl-Ex-J] to Plaintiff [Compl-Ex-I]-and 8/31/00 response [Compl-Ex-M] to Plaintiff [Compl #36]-were decisions (Br., p. 11 & 12 respectively), apparently to imply compliance with 34 CFR Part 30 for Plaintiffs 10/16/97 filing:
   - Pl. provided Compl-Ex-J (11/12/98) and Compl-Ex-M (8/31/00) for review of their texts
   - Neither letter is a 34 CFR 30.24(e) written notice of decision regarding existence or enforceability of alleged debt after a review of filed objections/relevant evidence
   - They do not require 34 CFR 30.33(f)(1) payment on 11/19/98 or 9/7/00, respectively.

The records show Plaintiff timely filed a request for review upon first receipt of an opportunity from Defendant (*see* Issue 1 above); the Hearings Branch made no investigation, was non-responsive, and failed to complete 34 CFR Part 30 requirements prior to 9/22/00 offset.

ISSUE 3: Defendant claims that decisions complied with "...Plaintiff's promissory note, the Higher Education

Act...and common law principles governing loan contracts" (Br. p. 12, end top ¶), "[t]he factual circumstances of Plaintiff s loan history and applicable legal principles and statutes," (Br. p. 13 last sentence), and "[t]he factual circumstances of Plaintiffs situation and his arguments why he did not owe the loan" (Br. p. 10, end top ¶)-compared to the effective terms, code, and regulations, and to Defendant's record at the time of 9/22/00 offset against Plaintiff.

Disc./Admission: Pl. request *#1,* "With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the alleged 6/21/85 loan disbursement showing Plaintiff s required endorsement in receipt of the alleged loan check," *Def. answer,* Admit that Defendant has not provided a copy of the endorsed loan check but has provided Plaintiff with numerous copies of his signed promissory note.

Disc./Def. Admission #6: Prior to Plaintiffs original 1/2001 filing with this Court in matter, as far as copies of actual loan documents, Defendant only provided Plaintiff with copies of the promissory note related to the account.

Disc./Admission: Pl. request #7, "Prior to Plaintiffs original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCI), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him," *Def. answer,* Admit that, prior to this suit, Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant.

Discovery/Def. Admission #9: Prior to Plaintiff's original 1/2001 filing with this Court in this matter, Defendant did receive disputes and objections from Plaintiff that included statements related to his attendance and

withdrawal at the school, his not having received the alleged loan, his not having received contact from the lender or state guarantor about a loan or default, and his not having received verification of debt in response to his 1993 verbal and written responses to an initial demand received from Defendant at his California residence.

Disc./Def. Admission #21: Defendant was aware that Plaintiff had not made any voluntary payment for the alleged loan at the time of accepting the default claim against him.

Disc./Def. Admission #26: Defendant recorded Plaintiff's objections that the promissory note had not been executed because he had not received a loan from the lender, but Defendant did not provide other loan documents or records *in response to these objections.*

- Under 42 USC 1981 and principles governing loan contracts, Plaintiff asserted legitimate defense to the alleged loan contract: the lender's express written promise was not performed and the Note was issued in anticipation of that specific consideration; i.e., U .C.C. § 3-303(b).

1. Defendant's 5/25/93 Debt No. G199309030022801 (Ex. C) is for guarantee/acceptance of the assignment of a Note (i.e., Ex. B p.2) by California Student Aid Commission (CSAC) for 4/16/87 claim payment (ORGLCMPAYDTE, Ex. C) to lender #801178 (LENDER, *ibid.*) claim of an alleged loan default on the previous day, 4/15/87 (DEFTDTE, ibid.).
   - Defendant's US000071-2 (enclosed as BE019-20)[ENCL] 4 identify #801178, B of A c/o CMSC, as both the originating and the claiming lender of Debt No G199309030022801
   - Defendant has not shown any documents of mutual intent to contract, offer, acceptance or agreed consideration between Plaintiff and Bank of America #801178
   - By ¶V Whole Loan Due (Note,[ENCL] 5 p. 2) #1, default would occur on non-payment when due

- By ¶II Date Note Becomes Due (Note,[ENCL] 5 p. 1) first payment would have been due 6 months after Plaintiff stopped carrying at least half the normal full-time academic workload
- Non-payment after Defendant's recorded, alleged withdrawal date of 12/13/85 (W/D DATE, Ex H), would have resulted in a default date of 6/13/86, not 4/15/87 (See Compl. 22a)

2. Besides the Note, Defendant possessed other relevant evidence before 9/22/00 offset:
   - By July 10, 1992 review report (enclosed as BE023-42[ENCL] 6) at Finding 27, (See BE036[ENCL] 6) Defendant advised: "...ED staff on site at Lender 'A' actually transferred loans on the CSAC system from Lender 'B' to Lender 'C.' (it must be noted that, after this process, the loans were transferred back...;" Defendant has no lender documents showing transfer of right, title and interest in the Note from First Independent Trust #828374, and there is no record of which, or how many, lenders "held" Plaintiff s First Independent Trust Note.
   - Interim report (enclosed as BE043-65[ENCL] 7) of Defendant's 1/31-2/18/94 review of CSAC, at Finding 19 (*See* BE057-58[ENCL] 7), "...it is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions...[Def.] is concerned lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or unconsummated) is not keyed in by the lender...;" merits consideration on a CSAC claim for a Note disputed as unconsummated.
   - Def. report on 1/26-2/6/98 review of CSAC (enclosed as BE066-77[ENCL] 8) at Finding 1, (See BE071-2[ENCL] 8) includes Required Actions: "(4) assurances that the Bank of America fraud loans have been properly coded"; *see also* 7/10/92 report Finding 32 at BE040-41[ENCL] 6 and 6/10/94 report Finding 3C at BE049-50[ENCL] 7), relevant because a Bank of America filed a

default claim as "originating lender" for a claim against the First Independent Trust Note.

3. Given TTCI's role as loan originator of the Note, and CSAC 06/06/85 guarantee (LNGUARDT, Ex. C)-when the partial copy of the application, Ex. A shows no lender action (*See* upper right comer, "FOR LENDER USE - LOAN IDENTIFICATION" box)—deliberations might extend to Defendant's 1/31-2/18/94 review of CSAC Finding 1 (*See* BE024[ENCL] 6), on instances of Administrative Cost Allowance "paid on a 'loan' when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school;" CSAC was to detail corrective procedures "which have been adopted" (but 7 years *later than* Ex. A).
4. Examination of the actual terms of the Note[ENCL] 5 and effective, applicable code and regulation:
   - Plaintiff, in ¶I of the Note, (See BE021[ENCL] 5) promised to pay "...to the extent [loan amount] is advanced to me...," ¶ VII #8 (BE022) indicated, "[i]n this Note the words I, me and my, mean each and all of those who signed it." The school did not cosign; Plaintiff was not agreeing to repay funds advanced to the school instead of himself. (See Compl. #14a)
   - The Note's ¶ XII, subparagraph 2 (BE022[ENCL] 5) also gave Plaintiff to understand the advance was to be to him, not to TTCI; , "*I will use all of the proceeds that I receive from this loan solely for tuition and other reasonable and authorized educational expenses, including room and board...transportation and commuting costs* [emphasis added]."
5. The Note's ¶ XII, subparagraph 1 (BE022[ENCL] 5) provides "[t]he terms of this Promissory Note will be interpreted according to the law (20 U.S.C. 1071 to 1087-2) and Federal Regulations (34 CFR Part 682)

that govern the GSLP [Guaranteed Student Loan Program];" it does not provide for interpretation by Defendant's "policy" outside the texts specifically identified.

- On June 17, 1985 the basic agreement regulations for participation in the GSLP included, by 1984 Supplement to the 1982 Edition of 34 CFR §682.401(b), pp. 491-2:

> (6) *Disbursement requirements.* (i) The lender shall disburse the loan funds by means of a check payable to the borrower or—if authorized by the borrower in writing, jointly to the borrower and the school that he or she is to attend. The check must require the personal endorsement of the borrower. For this purpose, a check is a draft drawn on a bank and payable on demand and deposit of the check by the borrower in his or her own account at a bank or other financial institution constitutes endorsement. (ii) The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf. (iii) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a check on behalf of a borrower...

[and]

> (7) *School notification requirements.* For each loan insured, as a condition of insurance, the school that certified the borrower's enrollment shall be notified of the insurance, the amount of the loan, and the name of the lender. This notification may be made either—(i) By the lender or the guarantee agency informing the school of

these facts no later than 30 days after the initial disbursement of the loan; or (ii) By the lender sending all loan checks to the school for delivery to the borrower.

- The Note does not state that the lender, not CSAC, would advise TTCI of loan insurance by sending the advance to an address not appearing in the proposal, instead of by notice; there is no indication the lender or Plaintiff agreed the advance would be through TTCI.
- Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub.L. 99-272 §16012 100 STAT 340 (April 7, 1986) effective for loans to cover the cost of attendance for any period of enrollment beginning on or after January 1, 1986 [ibid., §16041(b)(1)] amended §428(b)(1)(O) of the Higher Education Act to read:

> (O) provides that funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subparagraph shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check.

- Defendant offered loan discharge (Compl-Ex-G), advised Plaintiff (Compl-Ex-J, ¶5):

> "You state that you did not receive the funds from your student loan. The funds from student loans are frequently applied by schools to enrollment expenses, such as tuition, fees, and other school charges.

> Students frequently do not directly receive the funds."

and the Brief interprets that letter,

> "...stated to him that school loans are, by law, disbursed by checks or electronic funds transfers, which must be sent to the school attended by the borrowers, and typically applied to the student's tuition and expense, and that the student may never directly receive any loan money," (Br. p. 12 top),

in reliance on the COBRA for *loans made after 1/1/86,* to interpret the Note when, in fact, TTC1 anticipated COBRA, and was specifically prohibited from endorsing Plaintiff's check.

6. "The structure of the HEA clearly separates the student's enrollment contract, which establishes and governs the performance of the borrower's relationship with the school...and the borrower's repayment obligation under the loan contract." Br. p. 16, last sentence:
   - 2001 production of Ex. 2A does not exclude TTC1 waiving its terms, as Pl. described at least as early as 1998 (Compl-Ex-H, -I-1 and -K-1 & -2). TTC1's obtaining Plaintiff's June 17, 1985 Note signature shows Ex. 2A 1 payment of $3755.00 due 5-20-85 and "100% of tuition due upon acceptance to TTC1" were also not strictly enforced.
   - Besides the fact that arguments based on Ex. 2A are moot, as encompassing half a 16year-old agreement with another interested party in the loan (TTC1 was recipient school and loan originator, in control of all student and financial aid records/documents), it was not a factor of the final action subject to this review. See Disc. above on pages 5 and 6.
   - Defendant argues Plaintiff "received the loans in-kind" (Br. p. 14, 3rd line from bottom), effectively

asserting an implied-in-fact contract supersedes the Note; this must be invalid whether alleged against—or by—the U.S. An implied-in-fact contract can only exist in the absence of an express contract; *Algonac Mfg. Co.v. U.S.*, 428 F.2d 1241,1255 (Ct. Cl. 1970), supplemented by *Algonac Mfg. Co. v. U.S.*, 458 F.2d 1373 (Ct. Cl. 1972).

Def. asserts the Court's "searching and careful" inquiry here is ultimately narrow and limited to "whether the [Secretary's] decision *was based* on a consideration of the relevant factors and whether there has been a clear error of judgment [emphasis added]" Br. p. 9, middle ¶. 9/22/00 Treasury offset, as though the Note alone represented a contract/loan, was without documents from an "originating" lender (from alleged consideration through alleged default claim) to answer contest of the existence of debt; without the disqualifying CSAC "Contact History Report;" without TTCI "records", and without notice of decision to Plaintiff/opportunity for appeal, if necessary. It was not "reasonably based on the factual circumstances of Plaintiff's loan history and applicable legal principles and statutes." Br. p. 13 at end of last sentence. Review of the record shows there is no loan history; Plaintiff' s sole contact with any lender was by TTCI's origination of a loan request (application and promissory note signed at the school). Offset of Plaintiff s IRS tax refund on 9/22/00 was in arbitrary refusal to compare the First Independent Trust Note to Defendant's claim of a defaulted loan "originated" by Bank of America.

ARGUMENT B Plaintiff has failed to show a genuine issue of material fact, and Defendant is therefore entitled to summary judgment as a matter of law (Br. p. 14),

Summary judgment is appropriate only when the moving party is entitled to judgment as a matter of law and there are no disputes over material facts that may significantly affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,247-48 (1986). The moving party bears the burden of demonstrating the

absence of genuine disputes over material facts. *Celotex Corp v. Catrett,* 477 U.S. 317, 322-25 (1986). Defendant cannot show the express consideration from First Independent Trust (*or* intent to contract, offer, acceptance and consideration from Bank of America) required to support the allegation of a loan contract obliging Plaintiff. Numerous citations that "the borrower's loan contract with the lender and the enrollment contract with the school are two separate transactions..." Br. p. 17 top, and initial production of Exhibits 2/A-F in 2001 also show TTCI "records immaterial to Defendant's 2000 action for a 1987 Bank of America clim—not the sole issue in this suit. A genuine dispute concerning a material fact exits when the evidence presented would permit a reasonable jury to find in favor of the non-movant. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 248-49 (1986).

A claim is not subject to dismissal unless it appears to a certainty that no relief can be granted under any set of facts that can be proven in support of its allegations, *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2L.Ed.2d 80 (1957). "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 255 (1986); *H.F. Allen Orchards v. United States,* 749 F.2d 1571, 1574 (Fed. Cir. 1984) (notes the non-moving party shall "receive the benefit of all applicable presumptions, inferences, and intendments"). The Court must assume that the facts alleged in the Complaint are true and must resolve all reasonable inferences in favor of the Plaintiff, *Davies Precision Mach., Inc., v. United States,* 35 Fed. Cl. 651,662 (1996). A dismissal for failure to state a claim is a decision on the merits which focuses on whether the complaint contains allegations that, if proven, are sufficient to entitle a party to relief. *Gould Inc. v. United States,* 67 F.3d 925 (Fed. Cir. 1995). Introduction of, and reliance on, materials no obtained for decisions and actions against Plaintiff, but only for implying they would have been valid if Defendant included them in considerations prior to this suit, the

Motion fails to meet the standards for dismissal or summary judgment.

Discovery/Admission: Pl. request #22: "Defendant did not exercise the option to preserve school, lender and state guarantor records beyond regulatory retention expirations." *Def. Answer:* Object to this admission as containing multiple statements. Subject to and without waiving this objection, deny as to the school and state guarantor records, deny that Defendant received documents from the lender; admit as to the lender.

- *See* Discovery set forth on p. 4 & 5 above; with the exception of the Note, CSAC and TTCI "records," were not obtained prior to, or as a part of the record of, the actions/decisions under review in this instance, but were produced only in response to this suit; their admissibility is genuinely at issue, as to relevance and/or as to compliance with Federal Rules of Evidence
- The Brief only implies a loan history, "[a]s a Loan Analyst, I am also familiar with, and have access to, various other loan records...documents such as the application and promissory note, guaranty claim, correspondence, payment records, and other records that evidence transactions between the borrower and the holder...including Education and the original lender, and, for guaranteed loans, the loan guarantor, servicer, and secondary market." (Ex. 1, p. 3 #6) [emphasis added]; but all "direct" records of the alleged loan are of either pre-disbursal (i.e., Ex. A and B) or post-default-claim activity—without "originating lender" documentation.
- National Student Loan Database System "information...derived from regular reports to [Def.] from the holders of the loan, including Education itself, based on the holder's *regularly maintained records on these loans* [emphasis added]" (Ex. 1,p. 3 #5), in this instance US000086-7 "Loan Detail" and US000088-9 "Loan History" [BE078-81[ENCL] 9]—show by Data Provider LoanID (BE080[ENCL] 9) that *Defendant* made the limited 1985, 1993 and 2000 entries. The Audit Trail

Information Screen [BE082-83[ENCL] 10] for this 1993 account *begins* on 9/30/99.

ISSUE 1: "[Defendant] has set forth evidence establishing that Plaintiff owes an outstanding student loan" (Br. p. 14, last ¶), and "[t]he factual circumstances of Plaintiff's situation and his arguments why he did not owe the loan" (Br. p. 10, end top ¶) compared to Defendant's pre-suit record under review; and whether Def. Fed.R.Civ.P. 26(a)(1)(B)A & B (TTCI & CSAC) listings (See BE013[ENCL] 2) and Navarro and Rasca Declarations and Attachments thereto actually reflect the regulatory descriptions of lender, school and/or state guarantor "records" under the applicable programs, or are incomplete, unauthenticated, self-serving portions of what the record should be.

- See 34 CPR 682.414(a)(4)(ii) on lender records and *ibid.* (iii) on CSAC/Def. option to require lender records preservation; *also* 34 CFR 682.511(b)(1) on required lender-claim attachments:

Disc./Interrogatory: Pl. #25 "What evidence is or should have been available to Defendant demonstrating that the lender provided Plaintiff with a written statement of required disclosures at or prior to the beginning of the repayment period, including the scheduled date the repayment period was to begin, the due date of the first installment and the number, amount and frequency of payments?" *Def. Response:* Pursuant to 20 U.S.C. § 1078(2)(E)(ii), the lender is required to notify the borrower of the date on which the repayment period begins. Under 20 USC ¶1083, the lender is required to provide the borrower with an explanation of the terms of the loan and the terms of the repayment of the loan. See also 34 C.F.R. §682.205. Defendant is not in possession of any such documents.

Disc./Interrogatory: Pl. #26 "What evidence is or should have been available to Defendant demonstrating the lender's loan servicing, collection or due diligence activities with regard to the subject claim?" *Def. Response:* Defendant may have been able to obtain such documents from the lender or guaranty agency when he

first defaulted on the loan, however Defendant is not in possession of the lender's claim for reimbursement form which would have included its due diligence efforts.

1. The lack of lender document/record to show alleged disbursal of $2,500.00 on 06/21/85 (Ex. C, "DISB AMOUNT" and "DISBDTE") leaves open *which* originating lender: #828374/First Independent Trust from the Note or #801178/Bank of America from Defendant's claim.
2. To whom whichever originating lender made 6/21/85 disbursal is of essence in alleging a contract against the Note; "evidence" TTCI received it does not show Plaintiff s obligation.
3. See 34 CFR 682.513, p. 724, factors *affecting coverage* of a loan/judicial reviewability
   - *See also* Disc. requested admission answer #22, p. 10 above
   - lender performance, and originating lender identity, were unconfirmed at 9/22/00 offset

ISSUE 2: Defendant asserts "...on June 17, 1985, Plaintiff signed a Promissory Note...First Independent Bank was the lender and the [CSAC] guaranteed the loan. *Id. [Navarro Dec. ¶17]* "3. Plaintiff defaulted on his loan on April 15, 1987. Thereafter, the lender requested payment from CSAC, which paid the lender...then requested reimbursement on the loan from [Defendant] through the reinsurance agreement..." Br. p. 4 "FACTS" #2-3, as well as "34 C.F.R. §682.406. Even after [Defendant] pays the reinsurance claim, the guaranty agency is under an obligation to use due diligence to collect on the loan..." Br. p. 2 mid-¶l—compared to the Note Defendant provided prior to 9/22/00 offset as the basis for collection against Plaintiff, currently under review, and to the contents of the CSAC "Contact History Report" obtained since the Complaint.

- *See* Disc. admission/answer #22 on p. 10 above (Def. denial as to state guarantor on not preserving records) - *and* 34 CPR 682.414(a)(1)(ii) agency records requirements with (a)(2) minimum 5 year retention after "loan"

is paid in full or written off/Def.'s option to extend retention compared to Def. Fed.R.Civ.P. 26(a)(1)(B)B "Documents from [CSAC]" listing of one item "Contact History Report dated [12/31/92]," produced as US000014 (BE084[ENCL] 11)

1. CSAC accepted the claim of April 15, 1987 default, but that contradicted the Note's definitions, under the 12/13/85 "withdrawal" recorded (See Section I, Issue 3, Item 1 & 1st 3 "bullets" ["•"], p. 5 above), so was outside 34 CPR 682.406(a)(5) lender filing deadline.
2. Brief "FACTS" #2-3, p. 4, leap as to "loan" activity (from pre-disbursal to undocumented "default" claim) and as to the identity of "the lender" (First Independent Trust #828374 to Bank of America #801178).
3. Quoting the Brief, p. 4 #3, "[t]hereafter" the nonsensical 4/15/87 default date, "the lender requested payment from CSAC, which paid the lender" on 4/16/87 (Ex. C "ORGCLMPAYDTE"); this is so unreasonable as to indicate conscious indifference in the failure to investigate.
4. As to CSAC's requesting reimbursement "through the reinsurance agreement," Br. p. 4 #3:

Disc./Interrogatory: Pl. #50 "Does Defendant warrant that TTCI and all holders of the California Guaranteed Student Loan Program Promissory Note and Disclosure Statement signed by Plaintiff on June 17, 1985, timely complied with all terms of related written agreements and with all legal or regulatory requirements applicable to the claim against Plaintiff?" *Def. Response:* TTCI was never a holder of Plaintiff's loan or promissory note. The contract between Plaintiff and TTCI is separate and distinct from his contract with the lender, First Independent Trust, or holder of his promissory note. In accepting assignment of Plaintiff's loan, Defendant has accepted the information transmitted on the loan from the guaranty agency, including its assertion that it and the lender engaged in due diligent efforts to collect the defaulted loan and that it has otherwise abided by the terms of its agreement with Defendant, the Higher

Education Act and its implementing regulations.

Reimbursement based on CSAC's information/assertion that "the lender" and CSAC met 34 CFR 682.406 conditions of reinsurance coverage conflicts with the "Contact History Report" (See BE084[ENCL] 11), [first obtained after Compl. filing, despite Plaintiff's advisement he had not received CSAC contact about a loan or default, *See* Admission #9, p. 5 above]:

- 34 CFR 682.406(a)(11) due diligence required compliance with §682.410(b)(6) or (7):
  - See 34 CFR 682.410(b)(6)(ii), p. 689, sets claim payment date as "start" due diligence
  - "start" due diligence for CSAC's claim (Ex. C, "orgclmpaydte") was: 4/16/87
  - BE084[ENCL] 11 has two entries in the 1st 180 days (4/17/87-10/17/87)/violates requirements
  - BE084[ENCL] 11 also shows violation of 34 CFR 682.410(b)(6)(v) prohibition on 60+ day gaps
- Ex. 1 ¶18, p. 7, "CSAC continued to attempt to collect the debt from Plaintiff. Exhibit D," substitutes Defendant's Letter *History* for CSAC's Contact History Report (BE084[ENCL] 11)

Disc./Interrogatory: Pl. #23 "Which items, if any, in Defendant's disclosure document US000014 show Plaintiff's receipt of, or Plaintiffs response to, any mailing or telephoning—as distinguished from being a record of CSAC's initiation of mailing or telephoning that may or may not have resulted in a completed connection with Plaintiff?" *Def. Response:* The Contact History Report provided by CSAC is created and maintained by CSAC and is not a document that Defendant is familiar with nor is the copy provided very clear. Therefore, Defendant cannot definitively determine if there are any notations showing Plaintiff's receipt of or response to mailing or telephone call, CSAC may maintain another record, similar to Defendant's L102 Collector Note Pad, that shows telephone calls and mailings from Plaintiff.

Disc./Interrogatory: Pl. #24 "On Defendant's disclosure

US000014, do the records described as "BAD ADDRESS" dated 12/27/90, 10/07/91 and 11/20/91 refer to and define the immediately previous address description of "623 E BROADWAY 1 LONG BEACH CA90802" on 9/17/90?" *Def. Response:* As stated in response to interrogatory number 23. this Contact History Report is CSAC's document. Defendant is not familiar with the specifics of this document and thus is unable to definitively answer this interrogatory.

- Answers to interrogatories #23 & 24 set forth immediately above show not only a failure to so qualify Compl./Answer #14(b) "...records from the [CSAC] indicate that notices and demands for payment were sent to Plaintiff as early as [2/26/87]," but also a lack of justification in failing to obtain, through use of California DMV and Ex. A #18(A), a good address for Plaintiff prior to "[f]inally, on January 17, 1996," Br. p. 6 #12 after "[t]he letter [5/26/93] was returned as undeliverable, as were the two letters that [Defendant] sent on [6/27/93] and [7/18/93]. *Id.* [Navarro Dec. ¶20]." Br. p. 6 #10

ISSUE 3: "*Id.*, ¶18. After his default, the guaranty agency collected $211.85 from Plaintiff," Br. p. 15, 3rd sentence reference to "CSAC was able to collect $211.85 from Plaintiff between 1987 and 1993," Ex. 1, p. 7, #18 and argument, "...despite [CSAC] collection efforts and receipt of $211.85 toward his loan." Br. p. 17 middle ¶, compared to the record for 9/22/00 offset.

- *See* prior inconsistent statement, Disc. Def. Admission #21 set forth above on page 5.
- There is no 34 CFR 682.414(a)(1)(ii)(C) history showing any payment date/amount from or on behalf of Plaintiff; no source or date is identified for this October 1, 2001 allegation not previously made to Pl., apparently based on Ex. C "AMTCOLBYGA: 211.85 LASTPDGA: "
- The letters Defendant argues were "decisions" related to the claim, on 10/30/97—Compl-Ex-H (Br. p. 10, bottom), on 11/12/98—Compl-Ex-J (Br. p. 11-12, bottom to top), and on 8/31/00—Compl-Ex-M (Br. p. 10, top), make no

mention whatsoever of a payment from Plaintiff, as if he previously acknowledged the alleged debt, nor does Defendant's Answer to the Complaint.

ISSUE 4: "Contrary to Plaintiff's assertion, however, [Defendant] has presented records from TTCI..." Br. p. 15 mid 1st ¶, compared to Def. records for 9/22/00 Treasury offset certification.

- Plaintiff's attendance/withdrawal without receiving the alleged loan, belief that TTCI forged his name on a check, and lack of high school diploma in 1985 were raised prior to this suit (i.e., 2/21/98 Compl-Ex-H & 10/16/97-4/3/98 Ex. E) when Def. "did not have possession of any documents nor was it required to obtain possession" of TTCI documents (i.e., above Admission answers #7, p. 4 and #9, p. 5).
- Def. denies as to school on not preserving records (Disc. admission/answer #22, p. 10 above), but compare latter 6 listings for Def. Fed.R.Civ.P. 26(a)(1)(B)A, See BE013[ENCL] 2 (two initial disclosure exhibits "from [TTCI]" (Mot. Ex. A & B) are no longer attributed to TTCI) to:
  - 34 CFR 682.610(a)(1) inclusion of 34 CFR part 668 records & 682.610(b) loan records
  - 34 CFR 668.24(c)(1) school HEA program student/borrower records
  - 34 CFR 668.24(d) general school records; especially §(d)(3)(iv) on signed documents
  - 34 CFR 668.24(e)(2) FFEL eligibility/participation records 3-year retention requirement
- *See* Sec. 1, Issue 2, #5, p. 3 above, Pl.'s high school diploma (BE085[ENCL] 12) & regulations:
  - 34 CFR 682.201(a)/668.32(e)(1) diploma/equivalent required to find student eligible
  - 34 CFR 668.16 (f)(3) administrative standard: obtain/review prior educational experience
  - 34 CFR 682.609(a)(2) school liability for willful/negligent false certification
  - 34 CFR 668.14(b)(8) prohibits providing any statement to any student or certification to any

lender for loan exceeding student's eligibility; Def. ignores TTCI's violation in this instance, deferring to alleged "loan contract" based on *TTCI's receipt of loan funds:*

Disc./Interrogatory: Pl. #35 "What shows the validity of TTCI's loan origination for Plaintiff's with respect to having correctly ascertained and addressed his academic qualifications and eligibility for participation in the program, given his receipt of a high school diploma in 1999?" *Response:* Defendant objects to this interrogatory as it seeks information not relevant to this matter, nor is it likely to lead to the discovery of relevant information. Subject to and without waiving this objection, Plaintiff has admitted to applying for the student loan and signing the promissory note. Thus, he was required to verify the information on his application. Further, TTCI's alleged failure to determine Plaintiff's eligibility for the loan is separate and distinct from Plaintiff s obligation on his student loan contract.

- Pl. attended 2 community college classes (diploma not required) prior to enrolling in TTCI, which may have prompted him to acknowledge this as "in any school beyond the high school level..." at Ex. A #12; claiming school records preservation, Def. ignores loan origination for Plaintiff lacked a secondary diploma, and alleges a contract by *a disbursement TTCI received*

Disc./Interrogatory: Pl. #38 "Plaintiff attended orientation modules for four calendar weeks before his 6/17/85 signature was required on the Note prerequisite to contemplation of loan approval; what shows his knowledge at the time, or within a similar 4 weeks, of the act alleged to have changed his legal standing for attending modules from direct liability to TTCI for tuition per US000007?" *Def. Response:* Defendant objects to this interrogatory as it seeks information regarding *Plaintiff's* knowledge. Defendant could not possibly assume what Plaintiff knew about his classes in 1985.

ISSUE 5: Def. justification of prior action adverse to Plaintiff, by 2001 production of TTCI materials Ex. 2 &

2A-2F, fails to acknowledge possibility of fraud by loan originating school.

1. Despite interrogatory response #38 disclaimer, set forth above, Def. assumes Pl. meant "the first day of orientation" as "the first day of class" in describing his withdrawal from TTCI, "If Plaintiff had in fact withdrawn after the first class on May 20..." Br. p. 16, ¶1.
   - Pl. indicated attending and withdrawing after "the flrst class session" (Compl-Ex-K-2, ¶4) or "the flrst class" (Compl-Ex-H, ¶2), but he did not recall or specify a date; that he did not count the orientation period as "class" is indicated both by the phrase "would no longer be attending this school" (*ibid.*), and by having signed the Note on June 17, 1985.
   - Plaintiff s exclusion of orientation in identifying "the first day of class" is supported by regulatory definition, "the period that begins on the first day of classes...instructional time," that excludes periods of orientation, 34 CFR 668.2(b) Academic year (1) & (2)(iii).
     - withdrawal before undisputed 6/17/85 Note signing is not a reasonable inference
     - "the first day of class" not orientation: Passenger Class start on July 15, 1985 (Ex. 2E)
   - 7/15/85 was not unreasonably past Note's estimated disbursement, around 7/8/85 (7/4/85 was Thursday/holiday weekend) for Pl.'s withdrawal to have been before loan was made
2. Exhibit 2 "Explanation of Bruce Edwards School and Financial Aid Records" on 9/28/01:
   - Rasca, apparently associated with TTCI only since 2/98, swears to 1985 events there:
     - Rasca's familiarity/knowledge of TTCI procedure/documents appears less than 4 years
     - Rasca has no personal knowledge of Plaintiffs 1985 actions or his signature
     - Rasca's interpretation presumes "records" genuinely reflect Plaintiffs participation
     - Achievable without proper loan disbursal, Ex. 2 p. 2

#5 says *TTCI received* $2,459.58

3. Exhibit 2A is incomplete, illegible, excludes terms indicated on reverse side, fails to comply with regulations for school records bearing a signature, and has no bearing on loan contract performance according to Def. (Br. p. 16-7, 2nd full sentence from bottom to end of that ¶). However, the fact that the loan request had not been completed by June 17, 1985 (when TTCI obtained Plaintiff s signature on the Note), shows TTCI did release him from Ex. 2A liability for the 1 payment of $3755.00 due 5-20-85, the "100% of tuition due upon acceptance to TTCI" handwritten provision in the Itemization of the Amount Financed box, and the "Time is of the essence of this contract..." preprinted provision just below it.
4. In 2001, Defendant produces Exhibits 2B-2D as if they show express loan consideration:

Disc./Admission: Pl. request #2 "With regard to the EDUC claim against Plaintiff, Defendant does not have, and has not provided to Plaintiff, a copy of the original receipt from the school at the time of the alleged 6/21/85loan advance into the school's account purportedly on Plaintiff's behalf." *Def. Answer:* Object to admission as unclear and ambiguous as to definition of "original receipt from the school." Subject to and without waiving this objection, admit that Defendant has not provided Plaintiff with a receipt of loan from school because no such receipt exits.

Discovery/Admission: Pl. request #18: "Defendant did not offer Plaintiff copies of US000004-6 for verification of his signature at any time prior to Initial Disclosures in this matter, despite Defendant's experience with Plaintiffs non-payment and disputes of the existence of the alleged debt since Defendant accepted assignment of the claim in 1993." *Def. answer:* "Admit. Defendant did not obtain copies of US000004-6 until February 2, 2001.

- The partial loan application submitted as Ex. A does not indicate Plaintiff applied for, intended to apply

for, or authorized TTCI to apply for a Pell Grant, See Ex. A, #29(A)

- Determination of eligibility/ineligibility, or the fIling of an application, for a Pell Grant was not prerequisite for program loan eligibility/application until April 7, 1986, under Pub.L. 99-272 §16032(b); Ex. A does not express or imply related Pell Grant application.
- 34 CFR 668.24(e)(1) 3-year school retention requirements for Federal Pell Grant records

Discovery/Production: Pl. request #2: "A complete and legible copy of all contents of the Pell Grant application, including any separate instructions contemporaneously supplied to guide the completion of that application, with Plaintiff's 1985 signature requesting the funds that appear in the Pell Grant check receipts Defendant submitted to Plaintiff with Initial Disclosures (US000004-6)." *Def. response:* "Defendant is not in possession, custody or control of any such document. Defendant will produce under separate cover, however, the Records Disposition Schedules, Revised as of December 1998, with regard to how long the Department of Education is required to maintain Pell Grant Program Records."

Discovery/Admission: Pl. request #14: "Defendant has not provided Plaintiff to date with a copy of a Pell Grant application signed by Plaintiff in 1985." *Def. answer:* "Admit. According to ED/Records Disposition Schedule, Part 10. Item#17a (Nl-441-92-1, item 1a), Pell Grant applications were sent to Federal Record Retention Sites after the final payment was made and destroyed within 15 years of the final payment or audit, whichever was first. Thus, Defendant is not in possession of Plaintiff sPell Grant Application.

- Records Disposition Schedule (BE086-89[ENCL] 13) at #17a & b (BE088[ENCL] 13) shows Pell Grant student/institution records including payment voucher are destroyed as Def. admitted.
- Defendant recently required TTCI refund an

erroneously awarded/disbursed Federal Pell Grant, by September 12,2000 review report (BE090-108[ENCL] 14) Finding 4, p. 11 (BE100[ENCL] 14).

4[sic]. Without prior direct address to Plaintiff's 10/16/97 offset objection filing on his belief TTCI forged his name on a [loan] check, Def. interprets observations that Ex. 2B-2D are illegible as to the identify of the bank and incomplete with respect to establishing authenticity, genuineness and relevance as "Plaintiff leaps to the self-serving conclusion that they cannot possibly stand for what they indicate on their face: that Plaintiff received and signed for each Pell grant check on the dates indicated on each receipt" (but compare dates indicated on Ex. 2C & 2D with Ex. 2F "10/03/85 0.00 ANC" *absent no call*); and Defendant denies failure to previously dispute Plaintiff s withdrawal on the first day of class by pointing out this was done in the October 1, 2001 Brief. (Def. Response to Plaintiffs "Motion for Production of Complete and Legible Documents," filed 10/30/01, p. 2-3, #4 & footnote).

5. Exhibit 2E: is not self-authenticating, and shows a three week gap in the "record" after the 7/15/85 first day of class [when Plaintiff withdrew, i.e., Complaint-Ex-H]
   - "Agency Sales" score of 8/23/85 contradicts that day's "Absent No Call" entry (Ex. 2F).
   - does not show enough dated scores to meet check issuance stipulations (Ex. 2C & 2D)
   - Records no academic activity as of 1 week before last grant was verified/dated (Ex. 2D)
   - Does not show the date that Plaintiff's home phone was marked "disconnected" on it (possibly confirmed prior to TTCI's processing Pell Grant materials under Pl.'s name)
   - By Def. 1998/99 Compliance Audit (BE109-120[ENCL] 15), at Finding No. 12, p. 10 (BE117[ENCL] 15), TTCI continued improperly disbursing Title IV funds 13 years after Plaintiff withdrew.

6. Transportation Training Corp., doing business as TTCI since 5/2/67 (LA Co, CA, filing #99 1713227), offered *airline computer systems* training to Plaintiff in 1984-5. Omitting the handwritten record begun in May, 1985 (see BE121[ENCL] 16), Ex. 2F are computer printouts, but are not a self-authenticating "computerized attendance system" (Br. p. 5 #6/Ex. 2, p. 3 #9); they do not reflect the school name; the instructor name; column headings (except one page); creation-, data entry- or printing-dates; an ending total, or consistency.
   - The latest date of 11/11/85 does not match Ex. C withdrawal date of 12/13/85.

Disc./Production: Pl. request #5 "Whatever official document from which Defendant determined and recorded the withdrawal date of 12/13/85 for Plaintiff." *Def Response:* Defendant has requested the Department's Contractor at the Student Loan Processing Center in Greenville, Texas to look for a document that satisfies this request. If such a document is discovered, Defendant will produce it.

Disc./Production: Pl. request #8 "Certification of Attendance Calculations received from Defendant (US000009-13, inclusive) authenticating their 1985 creation and their 2001 production, including identifications of the person or persons responsible, at least by naming their official capacity with the school, and of the original hard copy source of the data; descriptions of any methods by which the information was verified upon initial entry and upon recent production for Defendant's Initial Disclosures; indications of whether or not the personnel involved continue to be employed by the school to date; and details of any uses the school made of this information prior to recent production for Defendant's Initial Disclosures." *Def Response:* Defendant objects to this Request to the extent that it does not seek production of documents but rather information similar to an interrogatory. Defendant will produce by separate cover, however, a copy of the fax coversheet that accompanied US00004-13. Defendant is not in

possession, custody or control of any other documents to satisfy this request.

Notwithstanding pro se ineptitude in seeking authentication for TTCI materials, said fax cover sheet (see BE122[ENCL] 17) seems a seriously inadequate foundation for the fraction of normal student records—not obtained for indicated review/response prior to 9/22/00 offset on a disputed 1993 claim—promptly produced in 2001 when required by U.S. Department of Education counsel, for self-defense. While receipt of an alleged loan advance and request/receipt of a Pell grant are not undisputed on Plaintiff' s part, TTCI has clearly established that it received student aid funds in 1985 based on having enrolled Plaintiff, without a high school diploma, and is able 16 years later to produce attendance materials in seeming support.

Review with Plaintiff of recently produced CSAC and TTCI documents (and the lack of lender documents to show First Independent Trust performance or Bank of America loan origination), between 1993 initial demand and 9/22/00 action, may have correctly resulted in referral to the Department of Justice (Compl. #21) on such indication of fraud by interested parties, rather than this cause of action arising under Defendant's standard that fraud be "definitively established through substantial evidence" (Disc./Admission answer #34, in part)—while withholding pertinent information (and certify the account for offset).

ISSUE 5[sic]: "Department of Education implementation of statutory requirements, regulations and code," Compl. #1, versus "Defendant's rejection of Plaintiff's administrative claim was neither arbitrary, capricious nor an abuse of discretion," Br. p. 9 #1. Issues include at least:

1. Withholding access to due process, administrative review/appeal (i.e., Compl. #2)
2. Failure to timely review relevant evidence/records (i.e., Compl. #25 & 27-8/Compl-Ex. J)
3. Failure to ensure/confirm program participant

compliance prior to acceptance of claim, as well as upon notice of dispute (i.e., Compl. #8, 9, 21-3, 25-6, 29-32)

4. Unauthorized disclosure (Compl. 35); possible Privacy Act violation (See Ex. D 8/18/96)

For the reasons described in this Section B above, Plaintiff asserts Defendant's demand for judgment "as a matter of law," and "because there is no genuine issue of material fact to warrant further proceedings in this matter," Br. p. 17, is not founded in the facts of this case.

ARGUMENT C Sovereign Immunity Prohibits Plaintiff from Obtaining an Injunction and an Order Ceasing Collection Activity (Br. p. 14)

Defendant notes, "Section 1082(a)(2) [20 USC] prohibits all injunctive relief, *except when the Secretary exercises powers that are clearly outside his statutory authority* [emphasis added]" Br. p. 18 end ¶1. Defendant acted (not necessarily adequately) since 1993 on a CSAC claim for reimbursement of default claim payment to Bank of America #801178 as originating lender in connection to TTCI's receipt of funds against a proposed agreement (Note) between Plaintiff and First Independent Trust #828374. Defendant's exercise of powers against Plaintiff without showing consideration for the alleged contract has been outside statutory authority, not legal enforcement of a valid debt. Legitimate exception of bar to injunctive relief may be found.

ARGUMENT D Plaintiff has failed to exhaust his administrative remedies, thus Barring His Request for Damages in Tort (Br. p. 18)

The Complaint encompasses 28 USC 1346(a)(1) recovery of wrongful collection under internal-revenue laws permitting administrative offset for valid non-tax debt (Compl. #2-4) and, under 28 USC 1346(a)(2), allegations under the Civil Rights Act of 1991 at 42 USC1981 (i.e., Compl. #3, 5, & 39); the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and the Fair Debt Collection Practices Act at 15 USC 1692 et seq. (i.e, Compl. #1, 7, 10-20, 24-34, 36-7); the Privacy Act (Compl. #25 & Ex. E. at 8/18/86**), the

Administrative Procedure Act at 5 USC 552a (*ibid.*, and Compl. #2-5, 21-23, 41); and genuine issues of pertinent law/federal regulations applicable to the alleged loan contract/claim (i.e., Compl. #3, 8-9, 14b, 21, 25-32 & 36).

** *Disc./Interrogatory: Pl. request #2:* "Why was the 8/18/96 Letter Type N18 Notice of proposed Federal offset (US000026) sent to the California street address "623 E Broadway 1...90802," when that was not Plaintiff's then-current Colorado address to which the Defendant had sent all other items since January of 1996 (US000027) and from which ED had already recorded receipt of Plaintiff s letters (US000024 & US000023)?" *Def. response no. 2:* "Defendant typically matches its own address records with IRS return address database for all non-paying defaulters approximately once a year. In this instance, perhaps the IRS address and Education address did not match, so the N18 letter was sent to the last known address on file with IRS (the 623 Broadway address."

With respect to 28 USC 1346(b), Federal Tort Claims Act exhaustion of administrative remedies:

ISSUE 1: Defendant acknowledges Plaintiff sought administrative resolutions:

- Def. "responded to his Request for Review in a decision dated October 30, 1997" (Br. p. 10, last full sentence); "discharge" was offered, but no appeal opportunity (Compl-Ex-G)
- Def.'s 11/12/98 "decision...in accordance with Plaintiffs promissory Note..." (Br. p. 12 ¶1); offered "school refund" deliberation, not review of existence of debt (Compl-Ex-J)
- Defendant's "final decision...dated [8/31/00]" (Br. p. 10 top) claimed valid certification for offset, and did not offer opportunity for appeal (Compl-Ex-M)

ISSUE 2: Access to administrative review, opportunity to contest findings, appeals:

- Defendant disclosed an LI06 Letter History Screen [BE123-4[ENCL] 18] showing first 5/26/93 demand (BEI24[ENCL] 18) was recorded as "returned as

undeliverable, as were the two letters that [Defendant]sent on June 27, 1993and July 18, 1993. [Navarro Dec. ¶19]" Br.p.6#10-11. Thus, 34 CFR682.410(b)(6)(xii) required skip-tracing by all available assistance including state DMV within 10 days' notice [Plaintiff's] address was unknown; See Ex. A #18(A).

Disc./Admission: Pl. request #24: "Defendant had possession of Plaintiffs California driver's license number, but did not locate Plaintiff through the Department of Motor Vehicles between Defendant's 5/93 acceptance of the claim against him and Plaintiff s 11/94 relocation to Colorado." *Def. Answer:* Admit. Defendant uses Social Security Numbers to conduct skip traces on borrowers, not driver's license numbers.

- Def. "continued to send notices to Plaintiff at this '623 E Broadway' address..." Br. p. 6 #11, although it is followed by 3 "BAD ADDRESS" descriptions after reappearing on 9/17/90 from first use on 9/28/87 in CSAC's "Contact History Report" (BE084[ENCL] 11), until "[f]inally on January 17, 1986[sic] [Defendant] obtained a different address in Colorado" Br. p. 6 #12.
- No lender loan document shows Plaintiff was ever required to register with Bank of America
- Denying its first demand was forwarded, received in late June of 1993, and disputed from Plaintiff s residence in California (Answer 7), Defendant has no record that Pl. received any pre-l/96 notices. Thus, "[i]t was not until 1996 that Plaintiff first asserted that he did not receive the loan and that he did not attend TTCI after the first day of class," (Brief p. 15 mid¶l) is misleading and implies Plaintiff had a duty to respond before receiving Def.'s notices

Disc./Interrogatory: Pl. #3, "With the exception of ED's 9/5/97 Letter Type N18 Notice of proposed Federal offset and accompanying materials mailed to Plaintiff s current Colorado address, specifically what communication(s) from ED to any demonstrably then-current residence of Plaintiff included notice of how to request a

review of objections, a hearing or an appeal of a decision related to ED's claim against Plaintiff? [Note: Disclosure from Defendant to date does not show that ED was in possession of Plaintiff's correct residential address in California between 7/92 and 11/94.]" *Def. response:* The following system letters include instructions about seeking review of Plaintiff s student loan balance: 442 letter sent on November 24, 1999 [US000044]; the A50 letter sent on 7/24/98 [US000036]; the E38 letter sent on April 9, 1996 [US000058]; D00 letter sent on January 17 and 20, 1996 [US000059]; D01 letter sent on November 8, 1993 [US000064] N07 letter sent on June 27, 1993, August 18, 1993, and November 29, 1993 [US000065-66]: and the N03 letter sent on May 26, 1993, July 18, 1993 and October 30, 1993 [US000067-68].

- With respect to Defendant's response to interrogatory #3 set forth immediately above, none of the *post-1995* letters sent to Plaintiff in Colorado, that he did receive (*See* specimens enclosed as BE125-156,[ENCL] 19 in post-1995 chronological appearance on BE123-124[ENCL] 18) none describe how to request a review, hearing or appeal, some offer verification for timely written dispute, copy of judgment and/or address of original creditor. The pre-1996 mailings (BE157-168[ENCL] 20) were not sent "to any demonstrably then-current residence of Plaintiff," but to "623 E Broadway" (See BE123-4[ENCL] 18) that was not Plaintiff's and that CSAC had noted as a bad address.
- Thus 9/5/97 "N18" notice to file suit in Federal district court if disagreeing with a subsequent offset (Compl-Ex-E) was sole instruction Defendant's records actually demonstrate Plaintiff received for contesting or appealing final action for the claim against him. Plaintiff did not file suit until his taxes were offset over his objections. Plaintiff consistently responded to opportunities Defendant provided (invitations to dispute for verification of debt) and did try to initiate attempts to resolve the issue with Defendant (Compl-Ex-H &

Compl. ¶36), short of responses that might be taken as acknowledgment of debt/obligation on his part (apply for "loan" discharge, Compl-Ex-G or attempt to "prove" TTCI owed a "refund," Compl-Ex-J).

ISSUE 3: Access to administrative process:

Disc/Interrogatory: Pl. #4: "What were ED's responsibilities with regard to locating and ensuring contact with Plaintiff upon having accepted the default claim against him, and where are these responsibilities published in written form?" *Def. response* Education has no affirmative duty to locate a borrower, rather the borrower is required to notify the holder of its loan of his or her current address. See 20 U.S.C. ¶1078(b)(1)(P). In the interest of collecting the debt, [Defendant] will use all available means to locate a defautled borrower.

Disc/Interrogatory: Pl. #7: "What laws, regulations, policies or procedures pertain Defendant's handling of Plaintiff's dispute(s) to ED's claim?" *Def. response:* See response to Interrogatory number 5.[*] The Administrative Procedures Act at 5 U.S.C. §701 et. seq.

[* Response to Interrogatory #5: See 34 C.F.R. §30.1 et. seq. See also 20 U.S.C. § 1095a for Defendant's responsibilities with regard to disputes pertaining to Administrative Wage Garnishment.]

1. 34 CFR 30.1 et seq., authority includes (but is not limited to) 31 USC 3711
2. Def. reports flrst and most recent credit bureau reports on 8/29/93 and 5/28/94 (BE019[ENCL] 4)
   - See above: Argument D, Issue 2, p. 22-3; Def. violated 31 USC 3711(e)(3)
   - Prior to 9/5/97 Def. failed to provide Plaintiff 31 USC 3711(e)(1)(C)(iv) notice
   - Upon/after 9/5/97 offset notice and objection filing that was left incomplete by the Hearings Branch, Def. failed to provide Plaintiff a complete explanation of the claim, opportunity to [examine for specific issues raised and] dispute agency records and information about the claim, and access to its administrative repeal[sic] (if applicable)

3 "Between October 23, 1993 and February 24, 1996 Plaintiff's account had been referred to a private collection agency. His account has been referred to a total of five collection agencies since 1993" Br. p. 6 at Footnote 1. [*See*] Def. "Referral History Screen (R111)," enclosed as BE169,[ENCL] [21] shows multiple failures to instigate litigation (where Def. would bear the burden of proving the alleged contract/claim against Plaintiff) by deadlines established in connection with contractor failure to collect, See 34 CFR 682.410(b)(7)(v).

Defendant's records show no notice of administrative review/remedy available to Plaintiff except for 9/5/97 N18 mailing, for which the Hearings Branch failed to complete the alleged opportunity, requiring Plaintiff to submit to Defendant's demands or to file suit in Federal district court. Defendant did not initiate any other process (i.e., collection agency reporting within seven years, wage garnishment proceedings, or litigation) requiring notice and opportunity for administrative review/appeal, nor did Defendant advise of or provide for other means Plaintiff could address his claim administratively.

Conclusion

The Brief supporting Defendant's Motion contains self-contradictions, misstatements, and inferences not supported in the record, such as (but not limited to) [emphases added]:

1. "Despite *his* obligation to maintain contact with the holder of the note and to inform the holder of his Current address and telephone number, Plaintiff failed to do so," (Br. p. 6 #11);
   - Def. does not show obligation arising by lender performance of Note's express promise.
2. "[Defendant] and/or its contractors made numerous telephone calls to Plaintiff..." (Br. p. 6 #13) referring to Ex. 1 ¶21 reliance on Ex. E
   - Ex. E shows numbers phoned on 12/9/93,2/8/95 (before 1996 locating Plaintiff) and on 10/30/00, but none were Plaintiff's. Plaintiff *received* a call Def.

denies (Compl./Ans. #22a) and two from Ms. Spadoni regarding her letters (12/98 & 8/00) in 7 years.

3. "The L102 records all of the telephone calls...summary of all correspondence received..." (Ex. 1 p 8 mid-#21) is meant to describe Exhibit E, but:
   - omits 12 half-pages ofL102 Screen/Collector Note Pad from Def.Initial Disclosures[ENCL] 1
   - Def. failed to record receiving any phone calls from Pl. (Compl. #7, 13, 18)
4. "...verifying that [Plaintiff] *had financed* $3,635.00" (Br. p. 5 #5)
   - misstates "*...was going to obtain financing...*" (Ex. 2, p. 2 #4)
5. "On [9/2/98] in a letter...was not disputing that [Plaintiff] *took out the loan...*" Br. p. 8 #21
   - misstates 9/2/98 record (BE008[ENCL] 1) & original (Compl-Ex-I-1, ¶2) "*requested a loan*"
6. "Department of Education regulations...would have prohibited TTCI from making any additional disbursements..." Br. p. 16 top ¶, is belied by TTCI's willful/negligent false certification of Pl. program eligibility, and non-compliance for first-time student/borrower.
7. "Despite his allegation that the school owed him a refund..." Br. p. 16 top ¶, is unfounded, *Defendant asserted* that Pl. believes school owes refund, not Plaintiff (Compl-Ex-J, ¶6).

The lack of documented connection between Plaintiff s 6/17/85 signing agreement with First Independent Trust, and Defendant's Bank of America originating lender 1987 default claim shows little to no justification for Defendant's actions/handling of Plaintiff s disputes. Introduction of indirect "evidence" in retrospective justification of 9/22/00 offset in final agency action against Plaintiff falls outside the scope of this review.

Wherefore, Plaintiff respectfully submits this Response in Opposition to Motion to Dismiss, not exceeding 25 pages in length, pursuant to Order filed 10/20/01, on the date signed below:

11-20-01 Date s/*Bruce Edwards*
Bruce Edwards, Plaintiff pro se
1001 Emporia St.
Aurora, CO 80010-3825
(303) 341-9433 (non published, home)

Encl. 1 BE1-11: L102 Note Pad {US15-25}

Page: 1 Document Name: untitled
(L102) COLLECTOR NOTE PAD ED0703
REGION: 09 ACCT OWNER: ED616 04/18/01
COLL NUM: 09:5 4
ACCT NO: S*[SSN]**
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,227.65 PROJ/ACT CA: 0.00
CA BALANCE: 5,227.65

Date	Source Code	Narrative
11/06/00	EA9999	co rr borr snt ltr of disp. C.Burke
11/07/00	EA9999	corr update corr to cltr T.Domes
01/23/01	ED9291	per Vanessa Santos/OGC/HQ req recall acct fr AG524. Bwr filed suit against the dept. JLiu
	ED9354	Branch Chief, R. Robinson, instructed me to mail CB Report to Vanessa Santos, OGC, at (202) 401-9533. This was completed this afternoon./E. Cruz
02/01/01	PIC772	MI-Same as above. No longer with AG. No Resp. A.Ash
02/09/01	ED9312	Per Vanessa Santos/OGC, acct decertified from TOP. M.URBI/09
04/18/01	ED0703	

PF13-LI01 14-L1O2 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109
Date: 4/18/01
Time: 01:55:16 AM

{US000015}

Page: 1 Document Name: untitled
(L102) COLLECTOR NOTE PAD ED0703
REGION: 09 ACCT OWNER: AG524 1/23/01
COLL NUM: 99999 13:41
ACCT NO: S*[SSN]**
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,178.01 PROJ/ACT CA: 1,294.50
CA BALANCE: 6,472.51

Date	Source Code	Narrative
11/07/00	**EA9999**	**corr update corr to cltr T.Domes**
*** * ***	*** * ***	*** * *[SAME DATE RANGE HAS IDENTICAL ENTRIES (in reverse order for each half-page) AS IN ADMIN. REC. FILED 5/15/02 at #12-21; *see* Pet. App. p. 418-427]**
12/09/93	**EA 789999**	**LC1 10:45 (gc) ph. res. 310-432-6398 LC1 10:46 T1 WR # LC1 10:46 3SKP skip trace accounts LC1 10:46 Account transferred via G.C. LC1 10:46 lr #457 1**

PF13-LI01 14-L1O2 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109
Date: 1/23/01
Time: 2:42:37 PM

{US000016} – {US000025}

Encl. 2 BE12-15: EDUC Initial Discl. list

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Number: 01-B-0036

BRUCE EDWARDS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF EDUCATION,

Defendant.

DEFENDANT U.S DEPARTMENT OF EDUCATION'S INITIAL DISCLOSURES

The defendant, United States Department of Education, by and through Richard T. Spriggs, United States Attorney for the District of Colorado and the undersigned Assistant United States Attorney, hereby submits its initial disclosures pursuant to Fed. Rule Civ. P. 26(a)(1) as follows:

I. SECTION (a)(l)(A) DISCLOSURES:

Myron McNeil: Acting Branch Chief, U.S. Department of Education, San Francisco Service Center, Litigation Branch, 50 United Nations Plaza, San Francisco, CA 94102.

Nicolas Navarro or Janet Nori: Senior Loan Analysts, U.S. Department of Education, San Francisco Service Center, Litigation Branch, 50 United Nations Plaza, San Francisco, CA 94102.

Deloris Graham: Loan Analyst, U.S. Department of Education, San Francisco Service Center, Litigation Branch, 50 United Nations Plaza, San Francisco, CA 94102.

Owner of Travel and Trade Career Institute, 3635 Atlantic Avenue, Long Beach, CA 90807.

II. SECTION (a)(l)(B) DISCLOSURES:

A. Documents from Travel and Trade Career Institute:

Exhibit 1: Application for California Guaranteed Student Loan signed on May 6, 1985; loan amount:

$2,500.00 to attend the Travel and Trade Career Institute (TTCI).

Exhibit 2: Promissory Note and Disclosure Statement for Loan signed on June 17, 1985.

Exhibit 3: Receipt for Pell Grant Check from TTCI in the amount of $975.00 signed on August 14, 1985.

Exhibit 4: Receipt for Pell Giant Check from TTCI in the amount of $656.00 signed on October 3, 1985.

Exhibit 5: Receipt for Pel1 Grant Check from TTCI in the amount of $319.00 signed on October 3, 1985

Exhibit 6: TTCI Student Enrollment Agreement signed on May 7, 1985.

Exhibit 7: TTCI Student Progress and Grade Report.

Exhibit 8: TTCI Attendance Calculations for 1984-85 (5 pages)

B. Documents from California Student Aid Commission:

Exhibit 1: Contact History Report dated December 31, 1992.

C. Documents from Education's Debt Management Collection System Database and the National Student Loan Data System

Exhibit 1: Collector Note Pad [LI02] (shows any and all oral and written correspondence between Education or its agents and Mr. Edwards regarding his account, except the collection letters as indicated on the Letter History Screen).

Exhibit 2: Letter History Screen [LI06 Screen](shows letters that Education or its contractors sent to Mr. Edwards regarding his account), explanatory sheet and specimens of letters that were sent to Mr. Edwards and samples of letters listed on Ll06 Screen.

Exhibit 3: Audit Trail Information Screens (L108 Screens).

Exhibit 4: Debt Level Information Screen [LI09] and explanatory sheet.

Exhibit 5: Rehabilitation Screen showing interest accrual (L130 Screen).

Exhibit 6: Research Account Screen [R101 screen] that shows principal, interest, and balance due and last payment date (because Education is not yet the holder of the note, there will not be any amount due on this screen).

Exhibit 7: Account Transaction Screen [R103 Screen] and Explanatory Sheet (shows voluntary payments, Federal Offsets and interest accrual on account).

Exhibit 8: Payment Detail Screens (R104 Screens) and explanatory sheet showing application of payments to fees, interest and principal.

Exhibit 9: Program Specific Screen [RI07 Screen] and Explanatory Sheet.

Exhibit 10: Account Profile Screen [R109 Screen] and Explanatory Sheet (shows current due, including original principal, accrued interest and fees).

Exhibit 11: Referral History Screen (RIll)showing when and to which private collection agencies Mr. Edwards' student loan account was referred.

Exhibit 12: Federal Offset Account Information Screen [1100] for Process Years 19902001 and Explanatory Sheet.

Exhibit 13: Printouts from NSLDS showing all Title IV loans Mr. Edwards obtained.

III. SECTION (a)(1)(C) DISCLOSURES:

Not applicable.

IV. SECTION (a)(1)(D) DISCLOSURES:

Not applicable

Respectfully submitted

RICHARD T. SPRIGGS
United States Attorney

s/*Kenneth R. Buck*
By: Kenneth R. Buck
Assistant United States Attorney
1225 Seventeenth Street, Suite 700
Denver, Colorado 80202
Telephone: (303) 454-0100

Encl. 3 BE17-18 Request for Review blank

* * * *[set forth at Pet. App. 459]*

Encl. 4 BE19-20 L109 Debt Level {US71-2}

** * * [1/23/01 L109 is set forth at Pet. App. 456]*

BE020: Explanatory Sheet:

(L109) DEBT LEVEL INFO SCREEN ED0701
REGION: 04 ACCT OWNER: ED113 01/01/97
COLL NUM: 13:10

Name/SSN of debtor; ID number of debt:
ACCT NO: 999999999
DEBT LOC CODE: ED113
DEBT NO: G199304050022701 TYPE DEBT: GSL
ACCT NAME: DEBTOR, DAN PREV NAME:
Guaranty agency that assigned loan to ED:
GUARANTY AGENCY: KS 620 KANSAS
ORIGINATING LENDER:
899999 SLMA/EDUSERV TECHNOLOGIES
School attended:
ORIGINATING SCHOOL: 001944
ST MARY OF THE PLAINS COLLEGE
Lender paid on guaranty claim (SLMA=Sallie Mae):
CLAIMING LENDER AND ADDRESS:
899999 SLMA/EDUSERV TECHNOLOGIES
1050 THOMAS JEFFERSON ST NW
WASHINGTON, DC 20007-0000
DEBT AWGH FLAG: Y DEBT CLOSE REASON:
DATE DEBT ESTABLISHED: 12/01/92
CURRENT PRINCIPAL: 2,871.58
CURRENT INTEREST: 605.75 CUR[] PENALTY .00
CURRENT ADMIN: .00 CUR[] FEES: .00
Total owed ED: ED BALANCE: 3,477.33
Estimated collection costs: PROJ/ACT CA : 869.33
total payoff amount: CA BALANCE: 4,346.66
RATE: 8.00% IRCP:
CREDIT BUREAU STATUS: CB
First and most recent credit bureau reports by ED:
FIRST REPORTED: 05/28/94
LAST REPORTED: 4/20/96
FDP FLAG: N ACCT AWG FLG: Y DOJ FLAG: N
TOP STAT: 98-2

Encl. 5 BE21-2: Note, as received 6/6/01

* * * *[set forth at Pet. App. 133]*

Encl. 6 BE23-42: Review of CSAC, 7/10/92

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
50 UNITED NATIONS PLAZA – REGION IX
SAN FRANCISCO, CA 94102
OFFICE OF STUDENT FINANCIAL ASSISTANCE

July 10, 1992

Dr. Samuel M. Kipp, III
Executive Director
California Student Aid Commission
P.O. Box 510845
Sacramento, CA 94245-0845

Dear Dr. Kipp:

On April 20-28, 1992, we reviewed your Guaranteed Student Loan (GSL) tape dump procedures, documentation and processing. The enclosed report presents the findings of the review, references to Federal regulations and instructions, and actions required to correct program deficiencies. Most of the areas were addressed during our exit conference. As we stated at that time, because we were still analyzing the documentation presented during the review, and because we were waiting for further information from CSAC/EDS, a discussion on April 28 of all discrepancies was not possible.

Please review the report and respond to each finding by describing actions that have been taken. Your response should be sent within thirty (30) days of your receipt to me at the above address.

There are a number of questions regarding Tape Dump Instructions (ED Forms 1070 and 1071) that are pending further information from the Division of Program Operations and Systems and the Division of Policy and Program Development, Washington, D.C. Once I receive

responses from those Divisions, further communication on these issues may be required.

We appreciate the courtesy and cooperation of your staff during the review. If you have any questions about the review, please call me at (415) 556-1630.

Sincerely,

Linda M. Stoddard-Tsutsui

Chief

Guaranteed Student Loan Branch

* * *

Finding 1: Administrative Cost Allowance Receipt on Loans Prior to Lender Approval

A participating school may transmit an application electronically to CSAC for guarantee prior to the lender's approval. If the lender never sends the application back to EDS, the loan is reported as an undisbursed loan and ultimately canceled. In this instance, Administrative Cost Allowance is paid on a "loan" when there was never a lender to which to issue the guarantee. This can occur because the school identifies the lender and CSAC cannot commit the lender to make the loan and does not maintain a data base which compares the loan application to the lender's lending policy. Thus, there is no assurance that the lender is willing to make the loan when it is sent in by the school.

Citation: 34 CFR 682.100(b) (1); 34 CFR 682.407

Required Action: A guarantee agency guarantees lenders against losses. Thus, the agency may not receive Administrative Cost Allowance (ACA) on a loan on which it issues a "guarantee" unless the lender has decided to make the loan. The agency may receive ACA on a loan only when the lender has notified CSAC that the loan was accepted. In response to this report, the guarantee agency must detail the procedures which have been adopted to assure that CSAC does not bill for ACA on loans before lenders accept those loans.

* * *

Finding 27: Current Holder Code: System Allows Third-party Transfers of Loans

The EDS System allows the transfer of loans between two lenders by a third party (neither the buyer nor the seller). The decision not to place an edit in the system to prevent third-party transfers of loans between lenders was stated to have been made to accommodate servicers so that loans could be transferred on behalf of their clients. However, ED staff on site at Lender "A" actually transferred loans on the CSAC system from Lender 'IB'I to Lender "C."

(It must be noted that, after this process, the loans were transferred back to the correct holder so that servicing would not be affected.)

Citation: 34 CFR 682.401(b) (10)

Required Action: Procedures that will strengthen system security and that will disallow transfers of loans between two lenders by a third-party must be enacted. A description of the new system controls, and a certification that the controls have been enacted and tested for reliability, must be submitted with the response to this report.

* * *

Finding 32: Not Reporting Uninsured Loans

CSAC and EDS stated that the agency's system had never reported uninsured loans on the tape dump. However, Program Review staff (including both Lender and School reviewers) stated that they have identified loans which have lost their guarantees permanently (were not curable) during on-site reviews. While program review staff ensure that the school and/ or the lender records are changed, there is no mechanism which records this information on the master system for use by the agency.

When questioned about the CSLFC/UES loans, CSAC stated that the trustee, Bank of America, did provide the agency with two tapes listing UES loans, but only for those loans on which CSAC had already made claim payment. The first list was loans affected by the FIX and COMFIX programs, loans which were determined ineligible. The agency then attempted to flag these loans in its system. This resulting listing, while determined to

be ineligible loans, were not reported as UI because the agency stated it did not know it should. (The second list was made up of UES serviced loans that were not touched by FIX and COMFIX programs and, thus, were potentially curable.)

Citation: ED Form 1070, Tape Dump Instructions; ED Form 1071, Tape Dump Instructions, Uninsured Loans

Required Action: The agency must begin reporting loans under the Tape Dump code UI when reinsurance has been permanently withdrawn. ED is in the process of providing a complete list of the loans involved in the FIX and COMFIX programs. Once received, the agency must (a) flag its system to prevent claim payment; (b) research its records to ensure that a claim has not already been paid (if it has, reinsurance must be rebated immediately); and (c) record these loans as UI beginning on the next tape dump submitted. In its response, the agency must confirm that its procedures have been changed to ensure compliance.

* * *

Encl. 7 BE43-65: Review of CSAC, 6/10/94

June 10, 1994 {COPY}

Mr. Michael Carona
Chairman
California Student Aid Commission
1515 "S" St., Suite 500
P.O. Box 510845
Sacramento, CA94245-0845

Dear Mr. Carona:

On January 31-February 4, February 7-11, and February 14-18, 1994, staff from this office commenced the review the data supporting the Guaranty Agency Monthly Claims and Collections Report (ED Form 1189) and the Guaranty Agency Quarterly/Annual Activity Report (ED Form 1130).

Because it was not possible to cover all items included on these two forms during the above times, we are issuing the enclosed interim report so that corrective actions may

be started in those -areas where non-compliance was noted. When the review of the items remaining is concluded, a final report will be written to include any further findings.

There are a number of questions from the review that are pending clarification from the U.S. Department of Education in Washington, D.C. You will be advised once a response to these pending issues is received.

The interim report presents the findings of the review, references to Federal regulations or instructions, and actions required to correct program deficiencies. Please review the report and respond to each finding by describing actions that have been taken. Your response should be sent within thirty (30) days of your receipt to me at the above address.

We appreciate the courtesy and cooperation of you and your staff during the review. If you have any questions, please call me at (415) 556-1630.

Sincerely,
Bonnie S. Gonzalez
Acting Chief
Guaranteed Student Loan Branch

cc: Dr. Samuel Kipp, III, Executive Director California Student Aid Commission
Nina Winkler, Director
Guarantor and Lender Oversight Staff
Lee Hardwick, Acting Director
Institutional Participation and Oversight Service

* * *

Finding 3: Supplemental Preclaims Assistance Incorrectly Calculated

* * *

C. Unanswered Questions from Review:

In 1992/93, ED returned accounts to CSAC which CSAC had purchased as claims from Bank of America as trustee for California Student Loan Finance Corporation C CLSFC)These loans were serviced by United Education Software (UES) and permanently lost reinsurance These

accounts, totaling approximately $800,000 were returned by ED and reinsurance was rebated.

1) During the review, the Agency was asked to provide documentation to verify that SPA collected on these accounts was also returned to ED. Additionally, a request was made for documentation which would verify that reinsurance and SPA had been returned to ED for any of these claims which should not have been paid and which were not subrogated to ED.
2) Reimbursement on "old" SPA (delinquency prior to 11/5/90 which led to claim payment) was the least of:
-$100, or
-2% of the outstanding principal balance of the claim, or
-actual costs

During the review, CSAC was asked to provide records which show what "actual costs" are so that the "least" may be determined.

Citation: 34 CFR 682.404(a) (2-3)
ED Form 1189 Instructions
Monthly Claims and Collections Report

Required Action: * * * C. With the response to the report, the requested documentation must be provided. After reviewing the documentation, further actions may be required.

* * *

Finding 19: Excessive Collection of Administrative Cost Allowance

It is the agency's policy to allow lenders the option of cancelling and reissuing loans in conjunction with their loan override functions. The Administrative Cost Allowance (ACA) paid to the agency by the Department is calculated by subtracting the unconsummated loans from the total loans guaranteed. Since ACA is not paid for unconsummated loans, the loan must be correctly identified as cancelled or unconsummated by the lender.

The Department is concerned that lenders may be using edit overrides without adequate monitoring by the Agency. If the correct reason code (cancelled or

unconsummated) is not keyed in by the lender, the Agency may receive ACA to which it is not entitled.
Citation: 34 CFR 682.407
Required Action: The Agency must provide information as to the extent of this activity on the agency's complete loan portfolio. CSAC stated that these loans can be identified through use of the "Y" code in the "edit override" field. Upon receipt of documentation that will provide an accurate estimate of the extent of this issue, the Agency may be given further required action.

* * *

Encl. 8 BE66-77: Review of CSAC, 8/14/98

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
50 UNITED NATIONS PLAZA – REGION IX
SAN FRANCISCO, CA 94102
OFFICE OF STUDENT FINANCIAL ASSISTANCE

August 14, 1998

Ms. Jackie Tsang
Acting Executive Director
California Student Aid Commission
P.O. Box 419206
3300 Zinfandel Drive
Rancho Cordova, CA 95741-9026

Dear Ms. Tsang:

During the period January 26 through February 6, 1998, a U.S. Department of Education ("the Department") review team consisting of team members from this office as well as members from the New York and the Washington D.C. offices, conducted an examination of the operations, systems, organization and management of EdFund and the California Student Aid Commission (CSAC / "the agency").

The enclosed report presents the observations and findings of the review, references to Federal regulations or instructions and actions required to correct program deficiencies. Your response to this report, including a description of actions you have taken, should be sent

within 45 days of your receipt to me at the above address. In the event you wish to appeal the findings in this report, your appeal must be forwarded within 45 days to the following address:

Larry Oxendine Director
Guarantor and Lender Oversight Service
600 Independence Avenue, S. W.
(ROB-3, Room 4624)
Washington, DC 20202-5138

* * *

Sincerely,
s/[illegible]
N. Rao Palagummi
Senior Guarantor & Lender Review Specialist
Guarantor & Lender Oversight Service
Enclosure
cc: Dr. Jon D. Shaver President & CEO, EdFund
Larry Oxendine Guarantor and Lender Oversight Service

* * *

Finding 1: Incorrect listing of outstanding loans by the Financial Aid Processing System (FAPS):

It appeared that the Financial Aid Processing System listed many loans as outstanding when it is likely they are paid in full. The Agency began its lender loan reconciliation effort in approximately 1994; it is not yet completed. The Agency has a listing of 215 LIDs (approximately 500,000 loans) that are not yet 100% reconciled as part of its reconciliation effort and has further identified that many of the loans attributable to these LIDs have been outstanding for over ten years. Some examples of the lenders on this list include:

800788 Bank Of America, Trustee for CSLFC,
loans 16,753

8011 23 Bank Of America, Trustee for CSLFC,
loans 11,694

801178 Bank Of America, Trustee for CMSC
loans 11,342

828374 First Independent Trust, # loans 2,822

Additionally, the Agency has a report that compares the loans on FAPS .to the loan balances transmitted by the lenders for NSLDS purposes (Lender NSLDS Quarterly Data Compliance Report). The LIDs and their associated loans on the NSLDS report largely appear to be the LIDs on the list of lenders whose portfolios have not yet been reconciled. It appears, therefore, that not only are the loans paid-in-full greatly understated but also reported incorrectly to NSLDS. Some years ago, loans tainted by fraud.(held by Bank of America as trustee for California Student Loan Finance Corporation, serviced by United Education and Software) were to be identified; we were unable to confirm whether any of the unreconciled loans should have been marked unreinsurable.

Citation: 34 CFR682.414

Required Actions: With the response to this report, the Agency must provide:

(1) information on the actions/steps it anticipates taking to conclude the lender reconciliation to 1/1/95; (2) the procedures it will implement to ensure that the data reflected on the FAPS and the data reported to NSLDS for loans in repayment agree; (3) its plans for lender reconciliation of loans guaranteed subsequent to 1/1/95; and (4) assurances that the Bank of America fraud loans have been properly coded.

* * *

Encl. 9 BE78-81: NSLDS printouts {US86-9}

NSLDS

Menu Aid Org Report

Loan History / Overpayment History / Pell Grant / Enrollment History / Student Access Interface

Display New SSN: ___ / First Name: ___ / DOB: ___ (MM/DD/CCYY) / Retrleve

Logged on as: SHEILI D SCANIFFE from Department of Education Region 0

BRUCE EDWARDS
SSN: * * *[SSN]
DOB: * * *[DOB]
! Defaulted

Aggregate Loan Information

Loan Type	Outstanding Principal Balance (OPB)	Pending Disbursements	Total
Subsidized Loans	$2,500	N/A	$2,500
Unsubsidized Loans	N/A/	N/A	N/A
Combined Loans	$2,500	N/A	$2,500
FFEL Consolidation	N/A		N/A
Perkins	N/A		N/A

Master Promissory Notes

Direct Loans: N FFEL: N/A

Loan Summary

Sort by: --- Select --- Display Only: ---ALL Submit

Currently Sorted by LOAN DATE, No filtering

https://www.nsldsfap.ed.gov/secure/lnhist.asp 1/23/01

{US000086}

1 SF – FFEL STAFFORD SUB

Status: DU as of 09/16/2000

TRAVEL & TRADE CAREER INSTITUTE 00792600

Guaranteed Amt: $2,500

Disbursed Amt: $2,500

*OPB: $2,666

Acad.Lv: ___

Loan Date: 06/06/1985

Sep. Loan Ind: A

Loan Period: N/A – N/A

GA: 555 – DEBT COLLECTIONS

Lender: 801178 – B OF A TRUSTEE C/O CMSC

Notes: *Amount includes capitalized interest

PRIVACY ACT OF 1974 (AS AMENDED)

https://www.nsldsfap.ed.gov/secure/lnhist.asp 1/23/01

{US000087]

NSLDS

Menu Aid Org Report

Loan History / Overpayment History / Pell Grant / Enrollment History / Student Access Interface

Logged on as: SHEILI D SCANIFFE from Department of Education Region 0

BRUCE EDWARDS SSN: * * *[SSN] DOB: * * *[DOB]

Detail for Laon

Loan Type	SF- FFEL STAFFORD SUB		
Loan Period Start:	N/A	Academic Level:	N/A
Loan Period End	N/A/	Data Provider Loan ID:	G1993090300228 01
Date Entered Repayment:	N/A	Separate Loan Ind:	A
Borrowed at OPEID	00792600	Interest Rate	8.00% FIXED
Borrowed at Name	TRAVEL & TRADE CAREER INSTITUTE		

Aggregate Loan Information

	Date	Amount
Loan:	06/06/1985	$2,500
*Outstanding Principal Balance:	09/22/2000	$2,666
Outstanding Interest:	09/22/2000	$2,439

*Amount includes capitalized interest

Activity for Loan

Action	Date	Amount
Disbursements		
	06/21/1985	$2,500

.../Indet.asp?LN_TYPE_CODE=SF&LN_NUM=[***SSN]
&LN_NUM_SUP=1&LN_SEQ_N 1/23/01
{US000088]

Status Changes for Loan

Date Changed	Status
09/16/2000	DU : DEFAULTED, UNRESOLVED

Guaranty Agency/Lender/Servicer Agency History

Start	End	Code	Name
Servicer Agent			
05/25/1993	CURRENT	555	FFEL ASSIGNED TO ED

PRIVACY ACT OF 1974 (AS AMENDED)

.../Indet.asp?LN_TYPE_CODE=SF&LN_NUM=[***SSN]
&LN_NUM_SUP=1&LN_SEQ_N 1/23/01
{US000089]

Encl. 10 BE82-3: L108 (audit) {US69-70}

[Note: subsequent pages omit repeated head/foot (bold)]

Page: 1 Document Name: untitled
(L108) AUDIT TRAIL INFORMATION SCREEN
ED0703 04/18/01
COLLECTOR: 09:53
ACCT NO: * * *[SSN]
ACCT OWNER: ED616

DATE	CHANGED BY	ACTION	FIELD CHANGED
02/08/01	ED9312	IAR	IRSDEBT-ACTIVE-SW
TO:	N		
FROM:	Y FOR DEBT ID G199309030022801		
02/08/01	ED9312	IAR	IRSOFF-CURR-BAL
TO:	0.00		
FROM:	5,148.81		
02/08/01	ED9312	IAR	IRSOFF-ACTIVE-IND
TO:	I		
FROM:	A		
02/01/01	PIC537	FMA	DEBT-LOC-CODE
TO:	ED616		
FROM:	ED056		
02/01/01	PIC537	FMA	ACCT-OWNER
TO:	ED616		
FROM:	ED056		
01/23/01	ED9291	FAR	COLLECTION AGENCY RECALL
TO:	ED056		
FROM:	AG524		
08/29/00	PIC596	FMA	DEBT-LOC-CODE
TO:	ED616		
FROM:	ED611		

DATE	CHANGED BY	ACTION	FIELD CHANGED
08/29/00 TO: FROM:	PIC596 ED616 ED611	FMA	ACCT-OWNER
08/29/00 TO: FROM:	PIC596 ED611 ED616	FMA	DEBT-LOC-CODE
08/29/00 TO: FROM:	PIC596 ED611 ED616	FMA	ACCT-OWNER
			{US000069}
08/29/00 TO: FROM:	PIC596 ED616 ED056	FMA	DEBT-LOC-CODE
08/29/00 TO: FROM:	PIC596 ED616 ED056	FMA	ACCT-OWNER
01/27/00 TO: FROM:	ED4246 ED056 AG528	FAR	COLLECTION AGENCY RECALL
09/30/99 TO: FROM:	EA42257 33333 55555	CBI	ACCT-COLL-NUM
TO: FROM:			

PF13-L101 14-L102 15-L103 16-L104 17-L105 18-L106 19-L107 20 L108 21-L109 22-L1

Date: 4/18/01

Time: 10:54:12 AM

{US000070}

Encl. 11 BE84: CSAC History {US14}

* * * *[set forth at Pet. App. 452]*

Encl. 12 BE85: Edwards' 1999 diploma

Aurora Public Schools Evening High School

Aurora, Colorado

This Certifies That

Bruce Edwards

has satisfactorily completed the Course of Study prescribed for Graduation and is, therefore, entitled to receive this

Diploma

Awarded by the order of the Board of Education of the Aurora Public Schools

Given in the year of Nineteen hundred and ninety-nine

s/*Patricia J Thorpe*	s/*Barbara J Johnson*
Principal	President, Board of Education
s/*David L. Hartenbach*	s/*Patricia P. Lord*
Superintendent of Schools	Secretary, Board of Education

Encl. 13 BE86-9: Rec. Disposition Sched.

DEFENDANT, U.S. DEPARTMENT OF EDUCATION'S ANSWERS TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

Production for Request No. 2 ***[BE086]***

U. S. DEPARTMENT OF EDUCATION
RECORDS DISPOSITION SCHEDULES
{DEPARTMENT OF EDUCATION
UNITED STATES OF AMERICA}
Office of the Chief Information Officer
Information Management Group
Revised December 1998 ***[BE087]***

Part 10 – Grant and Loan Program Records (ED/RDS Item No. 17)

Description of Records	Disposal Authority
Pell Grant Program Records. The Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.	
a. Student Records. The student record series includes: application, payment voucher (report portion of student aid report (SAR), multiple data entry (CSX, USAF and CSS ACT)), correspondence and related documents.	
Disposition: Transfer to a Federal Records Center after final payment to grantee. Destroy 15 years after final payment or audit, whichever is sooner.	ED/RDS, Part 10, Item 17a (NI-441-92-1, Item la)
b. Institution Records. This file series documents the participation of an institution in the Pell Grant Program. Records include: statement of account (SOA). institutional payment summary, original payment voucher, processed payment document, recipient data exchange record, electronic payment voucher, electronic transmittals, student eligibility and validation rosters and progress reports.	
Disposition: Transfer to a Federal Records Center after final payment to grantee. Destroy 15 years after final payment or audit. whichever is sooner.	ED/RDS. Part 10, Item 17b (NI-441-92-1, Item Ib)

Description of Records	Disposal Authority
c. Pell Grant Program History. Documentation of program legislation, budget histories, policy papers, congressional correspondence impacting on program activities, organization charts, and program management studies. **Disposition**: PERMANENT. Transfer to a Federal Records Center when 3 years old. Transfer to the National Archives and Records Administration when 10 years old.	ED/RDS, Part 10, Item 17c (N1-441-92-1, Item 1d)
d. Unsuccessful Pell Grant Applications. Applications, correspondence, and other records relating to unsuccessful (rejected or withdrawn) applications. **Disposition**: Transfer to a Federal Records Center 120 days after rejection or withdrawal. Destroy 3 years after date of rejection.	ED/RDS, Part 10, Item 17d (N 1-441-92-1, Item If)
e. Pell Grant Administration Records. Correspondence and/or subject files relating to routine operations and daily activities in administration of the Pell Grant Program. **Disposition**: Destroy when 2 years old.	ED/RDS, Part 10, Item 17e (N1-441-92-1, Item 19)

Encl. 14 BE90-108: Review of TTCI, 9/12/00

UNITED STATES DEPARTMENT OF EDUCATION
Office Of Student Financial Assistance Programs
Institutional Participation and Oversight Service
Southwest Case Management Division
—San Francisco Team -
50 United Nations Plaza, Room 266, S.F., CA 94102
(415) 556-4295 FILE COPY
SEP 12 2000

Mr. Rodger J. Erickson, President
Travel and Trade Career Institute
3635 Atlantic Avenue
Long Beach, CA 90807

USPS FIRST CLASS-CERTIFIED MAIL
RETURN RECEIPT REQUESTED P 241 202 188

RE PROGRAM REVIEW REPORT
PRCN: #200040917745

Dear Mr. Erickson:

On July 17, 2000 through July 21, 2000 a program review was conducted of the Title IV Federal Student Financial Assistance (SFA) programs administered at Travel and Trade Career Institute's main campus, located at 3635 Atlantic Avenue, Long Beach, CA 90807.

This report contains findings of noncompliance regarding the institution's administration of various Title IV SFA programs. Descriptions of these findings include reference to the applicable Federal regulations and specify the action required by the institution in order for it to comply with the involved regulations and statutes.

Please review and respond to the accompanying report as required, indicating the corrective actions taken by the institution. The institution must submit its response to the undersigned Senior Institutional Review Specialist within forty-five (45) days of the institution's receipt of this letter and report. Please use the Program Review Control Number (PRCN) noted above in order to facilitate our identification of the institution's program review response.

If you have any questions concerning the report or its requirements, please call me at (415) 556-4104.

Sincerely:

s/*Steve Hansen*

Steve Hansen

Senior Institutional Review Specialist

San Francisco Case Team

Case Management and Oversight Schools Channel

Cc: Marcia Clark, San Francisco Co-Team Leader

Laura Harcum, Washington D.C. Co-Team Leader

James S. Castress, Area Case Director

Edfund

ACCSCT

* * *

Page 11

FINDING #4: INELIGIBLE STUDENT PRIOR BACCALAURATE DEGREE

Travel and Trade Career Institute erroneously awarded and disbursed a Federal Pell Grant to **student #6,** whose admissions records indicate that she received a Bachelor of Science Degree in Commerce from Arellano University, located in Manila, Philippines.

An institution that fails to establish a student's eligibility for Title IV, HEA funds deprives other needy students of funds and creates a financial burden for the U.S. Department of Education.

REFERENCE: 34 CFR 690.6 (a), ***Code of Federal Regulations,*** revised as of07/01/99

REQUIREMENT: A student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

The institution must refund the Federal Pell Grant of $775 to the U.S. Department of Education since this was for the 1997-98 award year. Instructions will payment will[sic] be provided in the final program review determination letter (FPRDL).

* * *

Encl. 15 BE109-20: Audit of TTCI, 6/13/00

UNITED STATES DEPARTMENT OF EDUCATION
Office Of Student Financial Assistance Programs
Institutional Participation and Oversight Service
Southwest Case Management Division
—San Francisco Team
50 United Nations Plaza, Room 266, S.F., CA 94102
(415) 556-4295

JUN 13 2000

Arlene Almaleh, Director
Travel and Trade Career Institute
3635 Atlantic Avenue
Long Beach, CA 90807-3417

CERTIFIED MAIL P 241 202 111
RETURN RECEIPT REQUESTED

RE: Final Audit Determination Letter (FADL)
1998/99 Compliance Audit -ACN: 09 1999-05559
(7/1/98 through 6/30/99)
OPEID# 00792600

Dear Ms. Almaleh:

This letter advises you of the Department of Education's final audit determination concerning the audit report of Travel and Trade Career Institute's administration of the Title IV Student Financial Assistance Programs. This report, prepared by Barry Glasser & Company, Certified Public Accountants, covers the period July 1, 1998 through June 30, 1999. We have reviewed the institution's corrective action plan provided with the audit report. We have also reviewed the additional information submitted by the institution and Barry Glasser & Company, as requested in our Preliminary Audit Determination Letter dated February 28, 2000.

Enclosed is our final audit determination for this audit.

* * *

Sincerely,

Marcia A. Clark
San Francisco Co-Team Leader
Southwest Case Management Division
Case Management & Oversight
Student Financial Assistance

Enclosures

***

AUDIT FINDING NO. 12:
SATISFACTORY ACADEMIC PROGRESS STANDARDS NOT MET

The audit report revealed in a sample of 12 student files that in 8 of the files, the students were not making satisfactory academic progress (SAP) per the institution's SAP policy. The students received Title IV funds while SAP was not maintained.

FINAL AUDIT DETERMINATION FOR FINDING NO. 12:

34 CFR 668.7(c) and 668.14(e), General Provisions, 34 CFR 668.16(e) and 668.23(h), General Provisions, states that Federal regulations require an institution to consistently apply its SAP standards to all students within categories of students (i.e., full-time, part-time, undergraduate and graduate students, and educational programs established by the institution). The school must determine, prior to disbursing Title IV funds, if a student is meeting its satisfactory academic progress (SAP) standards.

By not adequately or consistently monitoring SAP standards for its students, the institution may be disbursing Title IV aid to ineligible students; this deprives other eligible students of aid and creates increased expense for the U.S. Department of Education.

In making this final determination, the case team has considered the independent auditor's report and the institution's corrective action plan (provided as an attachment to the audit report). We have also reviewed the additional

information submitted by the institution and Barry Glasser & Company, as requested in our Preliminary Audit Determination Letter dated February 28, 2000. The institution was required to identify all students enrolled for the period of July 1, 1998 through June 30, 1999 who received Title IV funds and determine if it properly implemented its SAP policy. It was then to identify the students who received disbursement of Title IV funds while not maintaining SAP. The improperly disbursed Title IV funds will be an institutional liability. The liabilities identified from the audit report and the file review are as follows:

	[Pell Grants]	[FSEOG Grants]	[Subsidized FFEL Loans]	[Unsubsidized FFEL Loans]
#53 AR			$1,272.00	$1,938.00
#21 FR			$392.35	
#101 FR	$1,500.00	$100.00	$l,447.70	
#114 FR			$914.46	
#194 FR			S1,606.56	
#291 FR			$1,606.56	
#308 FR	$1,500.00	S100.00	$1,240.31	
#409 FR	$1,350.00	$100.00	$3207.14	
#420 FR			$1,220.28	
Totals	**$4,350.00**	**$300.00**	**$12,907.36**	**$1,938.00**

Grand Total $19,495.36

AR=Audit Report FR=File Review ***

Encl. 16 BE121: TTCI "attendance" {US8}

ATTENDANCE CALCULATION 1984-85

NAME OF STUDENT EDWARD[sic], BRUCE

* * *[(1984) September-(1985) May 05 weekdays, blank]

May

started 5/20/85

06	07	08	09	10	13	14	15	16	17
4.75	*4.75*	*4.75*	*4.75*	*4.75*	*H*	*4.75*	*4.75*	*4.75*	*4.75*
20	21	22	23	24	27	28	29	30	31

* * *[(1985) June- September weekdays, blank]

Month	Total
May	*47.50*
June	*88.75*
July	*136.25*

{US000009}

Encl. 17 BE122: TTCI production cover

3635 Atlantic Avenue
Long Beach, California 90807
Phone: (562) 426-8841 Fax (562) 988-0464

Travel and Trade Career Institute

FAX

To: VANESSA (D.O.E.) **From:** GLENDA RASCA

Fax: 202-401-5391 **Date:** 2/2/01

Phone: **Pages:** 11 (including cover sheet)

Re: BRUCE EDWARDS **cc:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment**
☐ **Please Reply** ☐ **Please Recycle**

Here is the information we discussed this morning. If I can be of further assistance please give me a call.

Encl. 18 BE123-4: L106 (letters) {US26-7}

Page: 1 Document Name: untitled
(L106) LETTER HISTORY SCREEN ED0703
REGION: 09 ACCT OWNER: ED616 04/18/01
COLL NUM: 09:52
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,227.65 PROJ/ACT CA: 0.00
CA BALANCE: 5,227.65

Letter Sent Dat	Reques ter Code	Letter Type	Street		Zip	U
02/12/01	GDIRS 610	U19	1001 EMPORIA ST		80010	

* * **[SAME DATE RANGE HAS IDENTICAL ENTRIES (in reverse order) AS IN ADMIN. REC. FILED 5/15/02 at #7-10; see Pet. App. p. 414-418]*

05/26/93	GDNE W510	N03	*623 BROADWAY 1	E	90802	U

PF13-L101 14-L102 15-L103 16-L104 17-L10S 1B-L106 19-L107 20-L108 21-L109 22-L1
Date: 4/18/01 Time: 10:53:30 AM

{US000026}-{US000027}

Encl. 19 BE125-56: 1995+ dunning samples

***

Text of Sample "442" Dunning

* * *[Payment stub/date]

This letter is being sent to you at the request of Van Ru Credit Corporation. The U.S. Department Of Education has assigned your account to this agency for immediate collection action.

If you do not dispute the validity of this debt, or any portion of this debt, in writing, within 30 days after receipt of this notice, we will assume it is valid.

If you do dispute this debt, in writing, within the 30 day period, we will obtain verification of the debt or a

copy of a judgment and will mail a copy of such verification or judgment to you.

If you request the name and address of the original creditor, if different from the current creditor, van ru credit corporation will provide you with the name and address of the original creditor.

Van Ru Credit Corporation office hours are from 8am to 9pm (cst), Monday through Thursday, 8am to 5pm on Friday and 8am to 12 noon on Saturday. You may write to us at the address listed below or call us at the telephone number provided:

* * *[Address and disclaimer/licensing information]

{US000044} / *(BE141)*

Text of Sample "A50" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

The U.S. Department Of Education has, effective with this notice, assigned your account to the following agency for immediate collection action: xxx

In addition to principal, interest and administrative fees, your balance now includes collection costs, up to 25% of principal and interest.

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you do not dispute the validity of this debt, or any portion thereof, in writing, within 30 days after receipt of this notice, we will assume it is valid. If you dispute the validity of this debt, in writing, within the 30 day period, we will obtain verification of this debt or a copy of a judgment and will mail a copy to you. At your request, in writing, within the 30 day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Federal law prohibits unfair collection practices. Formal complaints against this agency may be lodged with:

U.S. Department of Education Atlanta Service Center
– Chief, Contract Services Branch
Atlanta Federal Center Tower
61 Forsyth St., SW, Rm 19t89

Atlanta, Georgia 30303

The agency responsible for handling your account is: xxx * * *[address/phone placeholders]

{US000036} / *(BE138)*

Text of Sample "E38" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

The U.S. Department of Education has, effective with this notice, placed your account with the private collection agency identified herein. You are legally responsible to repay this debt, including any accrued interest, penalty charges, fees and from 25% to as much as 42.84% in collection costs. This additional cost covers expenses incurred in having a private agency collect this account.

You must contact dcs to arrange for the repayment of your account, or this department will be forced to take additional steps to collect this debt. DCS' office hours are 11:00 a.m. to 8:00 p.m. Pacific Standard time. Federal law requires that we inform you any information obtained from you may be used as a basis to enforce collection of this debt.

If you do not dispute the validity of this debt, or any portion of this debt, in wr1ting, within 30 days after receipt, we will assume it is valid. If you do dispute the validity of this debt, in writing, within the 30 day period, we will obtain verification of the debt or a copy of a judgment and will mail a copy of such to you. At your request, in writing, within the 30 day period, we will provide you with the name and address of the original creditor, if different from the current one. Federal law also protects you from unfair debt collection practices. Formal complaints against the private agency collecting this account may be lodged with: the U.S. Department of Education, Chief, Contract Services Branch, San Francisco Service Center, 50 United Nations Plaza, Rm 242, San Francisco, California 94102.

The office responsible for handling your account is: * * *[address/phone placeholders]

{US000058} / *(BE126)*

Text of Sample "D00" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

This notice regarding your student loan account is from xxx... the Department of Education has placed this firm for immediate collection action.

Your failure to respond to this notification by communicating your intent, or by sending the balance due, may leave us no other alternative but to review your account for possible referral to the U.S. Department of Justice for suit.

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you do not dispute the validity of this debt, or any portion of this debt, in writing, within 30 days after receipt, we will assume it is valid. If you do dispute the validity of this debt, in writing, within the 30 day period, we will obtain verification of the debt or a copy of a judgment and will mail a copy of such to you.

Write to: * * *[address placeholders]

Or call between the hours of 8:00am-9:00pm central time * * *[phone placeholders]

Federal law protects you from unfair debt collection practices. Complaints may be lodged with: the U.S. Department of Education, Chief, Contract Services Branch, P.O. Box 2258, Atlanta, Georgia 30370-2258. * * *[Licensing information]

{US000059} / *(BE157)*

Encl. 20 BE157-68: pre-1996 samples

Text of Sample "N03" Dunning

* * *[Payment stub/date]

U.S. DEPARTMENT OF EDUCATION

The U.S. Department of Education (ED) now holds the defaulted student loan from xxx... to attend xxx... for which you are responsible. The entire outstanding balance on this loan is now due. You will also be liable for the costs of collecting this loan. These charges can add substantially to the amount needed to satisfy your debt.

ED wants you to know that paying your debt by a mutually agreeable installment plan may make your loan(s) eligible for loan "rehabilitation" or payoff through a consolidation loan, which will remove your loan(s) from default status, may improve your credit rating, and will make you eligible for additional title iv student finnancial assistance.

To remedy your default status, you can pay the total amount due immediately (follow the instructi0ns on the above coupon), or contact an ed customer service representative to enter into an acceptable repayment agreement or to find out additional information on the benlefits of ed's loan "rehabilitation" and "consolidation" programs. Our toll-free customer service number is: (999) 999-9999

All of ED's repayment opportunities are designed to assist you in remedying your defaulted student loan status.

Failure on your part to pay your debt may result in ed moving against you with one or all of the following collection measures:

ED will report your default status on this loan to national credit reporting agencies; this may hurt your ability to obtain further credit.

ED can refer your debt to a collection agency, and charge you the costs incurred by ed in having that agency collect this debt. These costs are currently up to 25% of the principal and interest owed on your loan. The department applies any payments you make first to these costs, and then to your loan balance. This will increase the cost to you of paying off your loan by up to 25%.

ED can notify your employer to initiate garnishment of your wages;

ED can refer your debt to the U.S. Attorney for litigation;

ED can perform computer matches with other federal agencies to determine if you are a government employee or recipient of other federal aid for purposes of offsetting all or a percentage of these funds;

ED can refer your debt to the Department of Treasury for offset of federal funds due you (including your federal income tax refund).

To avoid ed reporting this loan to credit bureaus as in default, you have 65 days from the date of this letter to pay this loan in full, make satisfactory arrangements to repay and actually make the first payment under this arrangement, or to request an administrative review.

To request an administrative review of this debt, an explanation of this debt, copies of documents, or an opportunity to dispute this debt, you must send a written request to the following address:(note:ed may use a contractor to provide information, arrange repayment terms, and process payments.) * * *[address placeholder]

Sincerely, s/*[illegible]*

Director, Washington Service Center

{US000067}-{US000068} / *(BE167-8)*

* * *[other samples of letters to bad address in California]

Encl. 21 BE169: R111 (referrals) {US83}

Page: 1 Document Name: untitled

(R111) REFERRAL HISTORY SCREEN ED0703

REGION: 09 LOCATION: ED616 04/18/01 09:56

ACCT NO: S***[SSN]

ACCT NAME: EDWARDS, BRUCE

PREVIOUS NAME: PAGE 1 OF 1

COLLECTION AGENCY HISTORY

Agency	Assign-Date	Opening-Balance	Return-Reason	Return-Date	Agcy-Receipts
AT524	09/16/00	4,013.31	REQ	01/23/01	
AT528	10/24/99	3,778.99	REQ	01/27/00	
AT522	07/20/98	3,778.99	AT1	10/02/99	
RT480	03/16/96	3,778.99	INA	03/21/98	
RT478	10/23/93	3,778.99	REQ	02/24/96	

PE13-R101 14-4102 15-R103 16-R104 17-R105 * * *

Date: 4/18/01 Time: 10:56:55 AM **{US000083} / *(BE169)***

#83 Objections (to Trial Exhibits) 1/25/02

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado BB JAN 25 2002 James R. Manspeaker Clerk s/[illegible] Dep Clerk}

Civil Action No. 01-BB-36
Bruce Edwards,
PLAINTIFF

v.

U.S. Department of Education,
DEFENDANT

Plaintiff's List of Fed.R.Civ.P. 26(a)(3)(ii) Objections with Grounds on the Admissibility of Defendant's Trial Exhibits

Pursuant to Instructions for Preparation of Final Pretrial Order as Amended February 15, 2001, section 7b, this list is hereby filed with the clerk no later than 11 days after these exhibits were provided to the plaintiff pursuant to the January 9, 2002, pretrial conference in this matter.

Defense Exhibit A: *Partial* Student/School Guaranteed Loan Application

A1. Relative to judicial review of the agency record related to the defendant's Treasury offset against the plaintiff noticed on 9/22/00 which triggered this action (Compl. #2), the defendant did not obtain, review, or disclose to the plaintiff, Exhibit A as part of prerequisite independent verification/notification for such involuntary collection for its claim. Exhibit A does not tend to make the existence of any fact of consequence to reviewing those agency records up to 9/22/00 more or less probable (FRE 401).

A2. On answering the plaintiffs defense (Compl. #12 et al.) to an alleged obligation, the defendant's showing or failing to show the disputed consummation of a promissory note signed on 6/17/85, by the plaintiff's receipt of a loan check in the amount and manner expressly identified in that agreement, is not demonstrated by post-suit

production/introduction of Exhibit A dated 5/6/85, which both logically and chronologically preceded the alleged consummation of said promissory note that estimated a disbursement on 7/4/85. Exhibit A is not relevant to the defendant's records of showing or not showing receipt of a loan prior to 9/22/00 offset action, but needlessly presents cumulative evidence of a loan request, which is not in dispute (FRE402 & 403).

A3. The defendant's 9/22/00 offset against the plaintiff was purportedly based on a loan approved and advanced by a lender as a consequence of the application represented by Exhibit A, but no loan identification appears in the space it provides "for lender use." At the time Exhibit A is introduced as evidence, the introduction of related writings from the lender, such as that loan identification, ought in fairness be considered contemporaneously (FRE 106) in any de novo determination outside the 9/22/00 agency records of whether Exhibit A qualifies as evidence sufficient to support, as a finding of fact, the existence of the disputed obligation alleged to have arisen by lender consummation of a later express written promissory note agreement (FRE104b).

A4. Exhibit A is incomplete; the signature in Part B School, any text below that signature on its face, separate instructions for completing "Part A Student" (as indicated at #10 & #16), agreed to conditions and authorizations given in the "student certification" printed on its reverse, and agreed to conditions given in the "education institution certification" printed on its reverse, are all missing from Exhibit A. The contents of those missing parts of the application, by which the plaintiff s reasonable understanding of his part in the agreement must be interpreted, ought in fairness be considered contemporaneously with the introduction of Exhibit A (FRE 106).

A5. As indicated in the defendant's 9/5/97 notice of intent to offset the plaintiff s Federal payments, program regulations prohibited any school from originating a postsecondary program loan request for a student without a high school diploma/GED. The educational institution

identified in Exhibit A acted in a loan-origination capacity and as fiduciary to all parties involved-and, in fact, the defendant has asserted that the school's receipt of loan funds obligated the plaintiff, notwithstanding contrary express terms and contemporary (pre-COBRA) code effective for that alleged disbursement. The school's willful or negligent certification of program eligibility for the plaintiff, who had previously attended community college classes but did not obtain a high school diploma until 1999; demonstrates that Exhibit A was not the result of the school's regularly conducted business activity of originating loans for eligible students, and that the source, method and circumstances related to the interested school's generating Exhibit A is untrustworthy (FRE 803(6) exclusion). The records the school was required to maintain on its determination of the plaintiff's eligibility for the program/loan request it originated ought in fairness be considered simultaneously with Exhibit A (FRE 106).

A6. Exhibit A contains information, at #15 & 16, indicating the plaintiff did not have a prior student loan, when regulatory requirements for a school originating a first-time student/borrower loan requests under the FFEL program included prerequisite documentation of a prior denial for the loan by a non-program lender, and the partial disbursements of the loan amount over the loan period. This goes both to Exhibit A not being the result of the school's regularly conducted business activity for first-time student/borrowers, and to the untrustworthiness of the source, method and circumstances of information provided by the school in lieu of lender documents and records related to the claim (FRE 803(6) exclusion); the records on the school's determination that resulted in the loan application not being handled as a first-time borrower request, and of the lender writings showing loan money alleged to have been advanced on the basis of Exhibit A ought in fairness to be considered contemporaneously with its introduction as evidence.

A7. Exhibit A shows the educational institution reported (by the copies indicated in the upper left corner) to the guarantor, the lender, and the student that it expected zero "-0-" financial aid for the loan period according to this partial application for a $2,500 loan the school had the plaintiff sign on 5/6/85; Exhibit I shows that, on that very day, the school prepared an enrollment contract solely between itself and the plaintiff for $3,635 as the amount to be financed (for tuition less cash deposit). The school's failure to indicate this difference under expected financial aid for the loan period on Exhibit A demonstrates a lack of trustworthiness in the source, method and circumstances of information it generated related to the alleged loan (FRE 803(6) exclusion).

Defense Exhibit B:
***Legible* Promissory Note and Disclosure Statement**

B1. The defendant recorded the plaintiffs request to its contractor, Van Ru Corp., "he asks us to forwd copies of our corr for file when returning acct to our emplyr" (1/23/01-LI02 Collector Note Pad at 12/28/99) that Complaint Exhibit K shows should have included 11/11/99 and 12/10/99 requests that "any verification of debt should include a clear and legible copy of all paragraphs on the back side of the promissory note as well as any proof of actual disbursement of a loan received by me or on my authorization, neither of which I have ever received." In this case, the second page of the promissory note both for initial disclosures and for the defendant's 10/1/01 motion to dismiss were also illegible. The defendant did not disclose the promissory note in reasonably legible condition as to the terms on the reverse side to the plaintiff until after this suit, on June 6, 2001 (which the label copied, on the bottom right of the second page of this Exhibit B, shows to be the version the defendant is using now), so only page 1 of Exhibit B would fairly fall under reviewing agency records with respect to the disclosure of any document related to the claim to the

plaintiff up to the 9/22/00 offset that triggered this action (FRE 402).

B2. Where the promissory note itself may be a public record (filed/from the public office where such documents are kept) of the agreement it sets forth that was signed on 6/17/85 as part of the school's loan-origination for the plaintiff, it is not a record of the plaintiff's receipt of the specific consideration the lender thereby promised to exchange for the plaintiff s promise to pay the loan amount "to the extent it is advanced to me..." in its Paragraph I. In fairness and for contemporaneous consideration upon introduction of Exhibit B in this case, lender document/records are required, to show the disputed receipt of the consideration (FRE 106), which was expressly described in the terms of Exhibit B to be interpreted under specific code and regulations that were identified/effective for that agreement (see Ex. B XII). That is, a loan check payable to and endorsed by the plaintiff was the only form of disbursement under applicable program regulations at the time-and it was neither required to be sent to the school in the manner of post 1/86 disbursements (per 4/7/86 enactment of amendment by the Consolidated Omnibus Budget Reconciliation Act of 1985), nor intended by these parties to be delivered to the school's address, which does not appear in the note-as the sole consideration specified to result in a loan contract between the plaintiff and the lender arising from that agreement.

Defense Exhibit C:

[RI07] GSL Program Specific Screen dated 9/27/01

C1. The of[sic] 5/23/93 entry date for the information contained on this screen shows the defendant's reliance upon data provided by CSAC in relation to this claim alleged to have been generated eight years earlier; but, the defendant's own reviews of the CSAC with respect to such claims generally shows a lack of trustworthiness as to having guaranteed "loans" upon the submission of applications from schools without lender approval/

advances, and as to having allowed the status and lending institution for loans to have been changed in its system at the lender level without adequate CSAC supervision, among other circumstances that might result in a false loan/default guarantee claim. Specifically, discovery revealed that CSAC's required certification of its own compliance with due diligence regulations on the claim in this instance was false. Finally, although CSAC is required to have maintained certain of its own and the lender records for a minimum of five years after the loan is paid in full or written off, much of the specified documents/records are missing-including the lender claim for reimbursement and many of the materials required to be attached to it. This shows the agency records are not based on CSAC's records of regularly conducted activity, contain absences of records required to be kept in that regularly conducted activity, and are untrustworthy (FRE 803(6) exclusions, (7) & (8)).

C2. Specifically, with respect to the alleged disbursement on 6/21/85 ("DISBDTE"), the plaintiff has not been provided with any lender document or record of that alleged disbursement to answer his defense that he did not receive the loan, which both the school and the defendant assert that the school received, which was not a provision of disbursement on the promissory note (Ex. B)that did not indicate the plaintiff should expect to receive until after 7/4/85. Introduction of Exhibit C requires the introduction of the documents/records that detail the specifics of that disputed disbursement and which ought in fairness be considered contemporaneously in determining if it met the terms of the plaintiff s agreement with the lender.

C3. On the defendant's record of the plaintiff s alleged withdrawal from enrollment at the school as 12/13/85 ("WITHDRAWAL"), the plaintiff was not advised of any discrepancy between his identification of his withdrawal that the defendant recorded as "after the first class" (1/23/01 L102 Collector Note Pad at 9/2/98), "after 1 class" (*ibid.* at 11/12/98), "at the end of the first day of class"

(*ibid.* at 12/21/99) prior to this suit. The defendant has not produced the source from which this 12/13/85 date was recorded for the plaintiffs withdrawal, and has provided materials that contradict that date during discovery (i.e., Ex. A #24). In fairness, the source of this data, previously withheld from the plaintiff, is required for consideration contemporaneously to the introduction of Exhibit C (FRE 106); but, this calls into question the trustworthiness of all the information from the defendant's system pertaining to its claim against the plaintiff for which there alre no source documents or records to show the origination, method or circumstances of its preparation-which only includes the interested school and the interested state guarantor to date, but not the lender the plaintiff is alleged to have received a loan from-do not similarly lack substance/trustworthiness (FRE 803(6)-(8)).

C4. On the "AMTCOLBYGA," which the defendant's 10/1/01 motion to dismiss first disclosed to the plaintiff is claimed to have been an amount collected by CSAC, the defendant did not advise the plaintiff of any record of actual contact, much less payment, between himself and CSAC when the defendant recorded the plaintiff's statements "never had contact with school again and never rcvd any docs concerning In until CSC Cred then Diversified Collection contacted borr in 1993" (1/23/01-L102 Collector Note Pad at 9/2/98) or "claims nobody contacted him for years" (ibid. at 11/12/98). The extant CSAC records defendant provided during Discovery do not include the required collection history that should show the details of such payment; therefore, in fairness upon introduction of this data of an alleged payment collected by CSAC, the source of this information is required for contemporaneous consideration (FRE 106), particularly where its source indicated untrustworthiness in this matter by false certification of required due diligence.

C5. Not only is the record of the alleged default date of 4/15/87 ("DEFTDTE") not supported by any lender documents/records disclosed to the plaintiff, or even by

the terms of (and code applicable to) the promissory note, but also the alleged next-day payment of that default claim on 4/16/87 ("ORGCLMP A YDTE") is so apparently unrealistic with respect to a transaction between a lending institution and a state government agency, that the submission of Exhibit C requires the introduction of the original sources of that data, (i.e., the lender default claim with supporting documents/records and the original submission of this information from the CSAC) for its contemporaneous consideration.

C6. The defendant's discovery disclosure in this matter shows that CSAC accepted the default claim from lender #801178, but the defendant's records reflect that the plaintiff was only copied the promissory note that identifies the lender from whom the plaintiff was to receive a loan advance was #828374. In fairness, the documents and records of the transition of the "originating lender" from the institution with which the plaintiff entered the express agreement that the defendant claims to be collecting against on behalf of a different institution should be introduced for contemporaneous consideration with the identification of the lender in Exhibit C.

Defense Exhibit D:
[LI06] Letter History Screen dated 9/27/01

D1. Exhibit D is incomplete as to the initial demand the defendant sent to an East Broadway address in California in May of 1993. This omission appears to exclude the possibility that the plaintiff did receive it by postal forwarding to his correct California address in late June of 1993, as described in Complaint #7; in fairness, the complete letter history to the date of its printing (such as displayed in initial disclosures USOOO026-27) should be provided for consideration upon the intr'oduction of Exhibit D (FRE 106).

Defense Exhibit E:
[LI02] Collector Note Pad dated 9/27/01

D[sic]1. Exhibit E is significantly incomplete as to the plaintiff s letters that the defendant recorded with enough detail to recognize and match with the letters submitted as Complaint Exhibit K. This is not the only incompleteness of the record (i.e., many of the plaintiffs communications were not recorded as to their content, just as "received letter from debtor"), but it is an incompleteness that is correctable by printing out the entire Collector Note Pad to date (such as USOOOO15-25 for initial disclosure in this matter). Since Exhibit E is the record the Court will review in determining whether the defendant complied with requirements to provide information and opportunities to the plaintiff before it took the step of administrative offset on 9/22/00, in fairness the complete Collector Note Pad should be provided for consideration upon the introduction of Exhibit E, which omits numerous lines of the record from 2/8/95-3/21/95, 10/30/97- 10/30/00, and 2/1-2/9/01 inclusive, including many that confirm events cited in the Complaint (FRE 106).

Defense Exhibit F:
[LI03] Account Transaction Screen dated 9/27/01

D[sic]1. Since Exhibit F reflects adjustments to the balance of the defendant's claim by an increase to the balance in 1993, with no further activity until after the turn of the century and the defendant's offset against the plaintiff on 9/22/00, and the Complaint charges that the defendant avoided using any process that would require it to prove the claim was a valid and legally enforceable debt until after the expiration of applicable record retention requirements that it did not exercise the option to extend in this case, in fairness the source documentation of the defendant's use of all available administrative collection actions in keeping with the 1996 Debt Collection Improvement Act goal of timely, aggressive collections that afford the consumer due

process should be introduced for contemporaneous consideration of the defendant's record of activity during the period indicated by the introduction of Exhibit F (FRE 106).

Defense Exhibits G & H dated 10/01/01:
[R101] Research Account Screen & [L130]
Rehabilitation and Consolidation, respectively

G/H. Because both Exhibit G and Exhibit H are based on a principal amount of $2,666.94, in fairness, the source document showing the plaintiff s receipt of the consideration described on the promissory note (Exhibit B), by which the defendant has alleged a contract arose and by the absence of which the plaintiff has defended that alleged obligation, should be introduced for contemporaneous consideration upon their submission in this case (FRE 106).

Defense Exhibit I:
Partial Student/School Retail Installment
Contract/Student Enrollment Agreement

I1.. Relative to judicial review of the agency record related to the defendant's Treasury offset against the plaintiff noticed on 9/22/00 which triggered this action (Compl. #2), the defendant did not obtain, review, or disclose to the plaintiff, Exhibit I as part of prerequisite independent verification/notification for such involuntary collection for its claim. Exhibit I does not tend to make the existence of any fact of consequence to reviewing those agency records up to 9/22/00 more or less probable (FRE 401).

I2. As a separate, earlier agreement between the plaintiff and a different party than of the alleged loan contract-the performance/liability under each of the two agreements having been clearly separate under the applicable program according to the defendant's 10/1/01 motion to dismiss Exhibit I was not part of the alleged loan contract that was the basis for the defendant's 9/22/00 offset against the plaintiff in this instance. Therefor, Exhibit I is relevant neither to reviewing the

defendant's records for 9/22/00 offset, nor to establishing the consummation of the specific promissory note agreement the defendant alleges resulted in a loan contract (FRE402).

I3. Exhibit I is both almost completely illegible and incomplete, with a notice at its bottom to see additional terms on a reverse side that is not included in Exhibit I. The introduction of its complete and comprehensible terms partially represented in Exhibit I that ought in fairness be considered contemporaneously for the relevance of this school contract's introduction for the disputed consummation of an express written agreement with a lender is required (FRE 106).

I4. The introductory paragraph on the face of Exhibit I states its contents and covenants govern the agreement between the school and the plaintiff; and the paragraph preceding the "notice to buyer" paragraph above the signature boxes makes time of the essence of that contract. The payment schedule recorded on Exhibit I is a single payment of the total tuition due 5-20-85, followed by a preprinted statement that "the policy of the school. is: all tuition and fees are due and payable on the first day of attendance," and a handwritten clause "100% of tuition due upon acceptance to TTC1;" but the school did not obtain the plaintiffs signature on a promissory note to repay the extent of a lender's advance to him until 6/17/85, without any written amendment to Exhibit I in evidence. Where the school is shown not to have modified or enforced some of the terms of its own contract, such as those related to time and payment, the possibility that it acted outside the plaintiff s agreement with respect to disbursement of the loan it originated for him is reasonably raised where there is no evidence that the plaintiff received the lender's advance in the manner expressly described in the promissory note agreement. That is, not only does the age, condition and previous non-disclosure of Exhibit I by the defendant show it to lack relevance in this matter (FRE 402), but the content of Exhibit I indicates a lack of trustworthiness in the source,

method and circumstances of school materials introduced (FRE 803(6) exclusion).
Respectfully submitted this 21st day of January, 2002:

s/*BruceEdwards*
Bruce Edwards
Plaintiff pro se
1001 Emporia Street
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#91 Objections (to counsel's misleading) 4/5/02

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Filed U.S. District Court District of Colorado
2002 APR-5 PM 12:01 James R. Manspeaker Clerk by ___ Dep. Clk

Bruce Edwards,
PLAINTIFF

v.

U.S. Department of Education,
DEFENDANT

Civil Action No. 01-BB-36

Plaintiff's Objection to Defendant's April 3, 2002 filing in response to "Plaintiff's 28 U.S.C. § 636(c)(4) Motion for Chief Judge Lewis T. Babcock to Vacate His Orders of Reference to Magistrate Judges, under Extraordinary Circumstances Shown"

Plaintiff pro se Bruce Edwards hereby objects that Defendant's Response to Motion to Withdraw Reference Pursuant to 28 U.S.C. § 636(c)(4) filed Apri13, 2002, was made in bad faith to continue deliberately misleading the Court, as most briefly illustrated by—but not limited tothe second sentence under "Facts" #3, "A review of the docket for this case indicates that the Plaintiff never filed a response [to Defendant's October 2, 2001 motion for summary judgment or, in the alternative, dismissal pursuant to Fed. R. Civ. P. 12(b)(6)[sic]]."

The Defendant was duly served with copies of the Plaintiff's ten filings in response to Defendant's October 2, 2001 motion for summary judgment or, in the alternative, dismissal pursuant to Fed. R. Civ. P. 12(b)(6); the first nine of which appear below under the abbreviated captions by which they were referenced in Judge Boland's Order filed October 26, 2001:

1) [October 10, 2001] Motion for Enlargement *[denied as moot];*
2) [October 17, 2001] Second Motion for Enlargement *[denied as moot];*
3) [October 17, 2001] First Motion to Strike *[found inappropriate and denied];*
4) [October 17, 2001] Second Motion to Strike *[found inappropriate and denied];*
5) [October 17, 2001] Third Motion to Strike *[found inappropriate and denied];*
6) [October 17, 2001] Fourth Motion to Strike *[found inappropriate and denied];*
7) [October 17, 2001] Fifth Motion to Strike *[found inappropriate and denied];*
8) [October 22,2001] Sixth Motion to Strike *[found inappropriate and denied];*
9) [October 22, 2001] Seventh Motion to Strike *[found inappropriate and denied];* and
10) [November 20, 2001] Plaintiff"s Response in Opposition to Motion to Dismiss (so captioned by Judge Boland's Order filed October 26, 2001)

Respectfully submitted this 5th day of April, 2002:

s/*Bruce Edwards*
Bruce Edwards
Plaintiff pro se
1001 Emporia Street
Aurora, CO 80010-3825
(303) 341-9433 (non-published, home)

#99 Administrative Record (AR) 5/15/02

5/9/02 Certification

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed United States District Court Denver, Colorado *BB*
MAY 15 2002 PM 1:37 James R. Manspeaker Clerk s/*JU*}

Civil Number: 01-~~B~~*BB*-0036

BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Harold Jenkins, declare as follows:

I am the Assistaant General Counsel for Postsecondary Education in the Office of the Gcneral Counsel, United States Department of Education (Department). Pursuant to delegated authority, I hereby certify that the attached pages 000001 through 000022 constitute true copies of the Department's Administrative Record compiled for use in the above-captioned case seeking review of the administrative proceedings before this Department.

s/*Harold Jenkins*
Harold Jenkins
Executed in Washington, D.C. on May *9*, 2002.

Index

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Number: 0l-B-0036
BRUCE EDWARDS
Plaintiff

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

INDEX OF ADMINISTRATIVE RECORD ON REMAND

Bates Stamp #	Title/Subject	Date
000001	Final Agency Decision Signed by Diane Spadoni	8.31.00
000003	Promissory Note for Guaranteed Student Loan (GSL) in the amount of$2,500,00.	6.17.85
000005	Federal Family Education Loan Program Specific Screen (R107) from Education's Debt Management Collection System (DMCS).	5.9.02
000006	Letter History Screen (L106 Screen) from DMCS.	5.9.02
000012	Collector Note Pad (L102 Screen) from DMCS.	5.9.02
000022	Account Profile Screen (R109 Screen) from DMCS, balance as of August 29, 2000.	5.9.02

#1-2 (see 8/31/00 DCS reply, p. 182 supra)

#3-4 (see promissory note, p. 133 supra)

#5 5/9/02 (R107) GSL Program Specific

Page: 1 Document Name: untitled
(R107) GSL PROGRAM SPECIFIC SCREEN ED0834
REGION: 09 ACCT OWNER: ED107 05/09/02
ACCT NO: S***[SSN] 10:19
ACCT NAME: EDWARDS BRUCE
PREV NAME: ___
STUDENT NAME: ___
STUDENT ID: 0

PAGE 1 OF 1

DEBT NO: G199309030022801
DATE ENT: 05/25/93
PRINCIPAL: 2,666.94
INTEREST: ___
PENALTY: ___
ADMIN: ___
FEES: ___
TOTAL: 2,666.94
ENDORSER: P
LENDER: 801178
ORGAGY: CA706 SID: 007926
LNGUARDT: 06/06/85 LOANTPE: STAF
DEFTDTE: 04/15/87 CBOCCDATE: 04/16/87
GA BAL DATE: 03/28/88
ORGCLMPAYDTE: 04/16/87 PRINPDLENDER: 2,500.00
INTPDLENDER 174.79 INTCAPBYGA: 174.79
AMTCOLBYGA: 211.85 LASTPDGA: ___
ORGSOLDT: 12/01/85
LITIND: N JUDMTDT: ___ JUDMTEXPDT: ___
WITHDRAWAL: 12/13/85
DISB AMOUNT: 2,500.00 DISBDTE: 06/21/85
RATE: 8.00%

PF13-R101 14-R102 15-R103 16-R104 17-R105 18-R106
19-R107 20-R108 21-R109
Date: 5/9/2002
Time: 11:20:09 AM

{000005}

#6-11 5/9/02 (L106) Letter History

[Note: subsequent pages omit repeated head/foot (bold); Admin. Rec. Index Bates numbers appear in {}]

Page: 1 Document Name: untitled

(L106) LETTER HISTORY SCREEN ED0834
REGION: 09 ACCT OWNER: ED107 05/09/02
COLL NUM: 10:19
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,453.10 PROJ/ACT CA: 0.00
CA BALANCE: 5,453.10

Letter Sent Dat	Requester Code	Letter Type	Street	Zip	U
09/17/01	GDIRS 610	U19	1001 Emporia St	80010	
05/17/01	TDLET 500	W41	1001 Emporia St	80010	
05/09/01	AG420	08A	1001 Emporia St	80010	
05/01/01	GDCA R515	A50	1001 Emporia St	80010	
02/12/01	GDIRS 610	U19	1001 Emporia St	80010	
01/18/01	GDCA R565	399	1001 Emporia St	80010	
01/04/01	GDCA R565	377	1001 Emporia St	80010	
12/14/00	GDCA R565	400	1001 Emporia St	80010	
11/08/00	GDCA R565	399	1001 Emporia St	80010	
11/08/00	ED029 1	A58	1001 Emporia St	80010	

10/29/00	GDCA R565	377	1001 Emporia St	80010
09/26/00	GDCA R515	A50	1001 Emporia St	80010
01/16/00	GDCA R565	445	1001 Emporia St	80010
01/09/00	GDCA R565	457	1001 Emporia St	80010
01/09/00	GDCA R565	457	1001 Emporia St	80010

Date: 5/9/200 Time: 11:20:29 AM {000006}

09/17/01	GDIRS 610	U19	1001 Emporia St	80010
05/17/01	TDLET 500	W41	1001 Emporia St	80010
05/09/01	AG420	08A	1001 Emporia St	80010
05/01/01	GDCA R515	A50	1001 Emporia St	80010
02/12/01	GDIRS 610	U19	1001 Emporia St	80010
01/18/01	GDCA R565	399	1001 Emporia St	80010
01/04/01	GDCA R565	377	1001 Emporia St	80010
12/14/00	GDCA R565	400	1001 Emporia St	80010
11/08/00	GDCA R565	399	1001 Emporia St	80010
11/08/00	ED029 1	A58	1001 Emporia St	80010

10/29/00	GDCA R565	377	1001 Emporia St	80010	
09/26/00	GDCA R515	A50	1001 Emporia St	80010	
01/16/00	GDCA R565	445	1001 Emporia St	80010	
01/09/00	GDCA R565	457	1001 Emporia St	80010	
01/09/00	GDCA R565	457	1001 Emporia St	80010	

Date: 5/9/2002 Time: 11:20:42 AM FIRST PAGE {000007}

12/24/99	GDCA R565	444	1001 Emporia St	80010	
12/10/99	GDCA R565	443	1001 Emporia St	80010	
11/24/99	GDCA R565	442	1001 Emporia St	80010	
11/24/99	GDCA R565	457	1001 Emporia St	80010	
10/29/99	GDCA R515	A50	1001 Emporia St	80010	
08/13/98	GDCA R565	X68	1001 Emporia St	80010	
07/24/98	ED023 2	A50	1001 Emporia St	80010	
09/05/97	GDIRS 610	N18			
08/08/97	ED023 2	U79	1001 Emporia St	80010 -0000	
01/24/97	GDCA R565	V72	1001 Emporia St	80010	U

12/26/96	GDCA R565	V74	1001 Emporia St	80010
10/11/96	GDCA R565	V70	1001 Emporia St	80010
10/09/96	GDCA R565	V70	1001 Emporia St	80010
09/14/96	GDCA R565	V70	1001 Emporia St	80010
08/28/96	GDCA R565	V70	1001 Emporia St	80010

Date: 5/9/2002 Time: 11:20:44 AM {000008}

08/24/96	GDCA R565	V70	1001 Emporia St	80010
08/18/96	GDIRS 610	N18	623 E Broadway 1	90802
08/15/96	GDCA R565	V70	1001 Emporia St	80010
08/08/96	GDCA R565	V70	1001 Emporia St	80010
07/04/96	GDCA R565	Y70	1001 Emporia St	80010
06/21/96	GDCA R565	E26	1001 Emporia St	80010
06/07/96	GDCA R565	V70	1001 Emporia St	80010
05/25/96	GDCA R565	E40	1001 Emporia St	80010
05/11/96	GDCA R565	V74	1001 Emporia St	80010
04/12/96	GDCA R565	E42	1001 Emporia St	80010

04/09/96	GDCA R565	E38	1001 Emporia St	80010	
01/20/96	GDCA R565	D00	1001 Emporia St	80010	
01/17/96	GDCA R565	D00	1001 Emporia St	80010	
09/07/95	GDIRS 610	N18			U
02/14/95	GDCA R565	D00	623 E Broadway 1	90802	U

Date: 5/9/2002 Time: 11:20:46 AM {000009}

09/02/94	GDIRS 610	N18			U
04/12/94	GDCA R565	D02	623 E Broadway 1	90802	
04/09/94	GDCA R565	D07	623 E Broadway 1	90802	U
03/23/94	GDCA R565	D09	623 E Broadway 1	90802	
03/18/94	GDCA R565	P02	623 E Broadway 1	90802	
03/02/94	GDCA R565	D02	623 E Broadway 1	90802	U
02/08/94	GDCA R565	D09	623 E Broadway 1	90802	U
12/15/93	GDCA R565	D09	623 E Broadway 1	90802	
11/29/93	GDLE T801	N07	623 E Broadway 1	90802	
11/08/93	GDCA R565	DOL	623 E Broadway 1	90802	U

10/30/93	GDSK P502	N03	623 E Broadway 1	90802	U
09/21/93	GDIRS 610	N18			U
08/18/93	GDLE T801	N07	623 E Broadway 1	90802	
07/18/93	GDSK P502	N03	623 E Broadway 1	90802	U
06/27/93	GDLE T801	N07	*623 E Broadway 1	90802	U

Date: 5/9/2002 Time: 11:20:48 AM {000010}

5/26/93	GDNE WS510	N03	*623 E Broadway 1	90802	U

Date: 5/9/2002 Time: 11/20/49 AM LAST PAGE {000011}

PF13-L101 14-L102 15-L103 16-L104 17-L10S 1B-L106 19-L107 20-L108 21-L109 22-L1

#12-21 5/9/02 (L102) Collector Note Pad

[Note: subsequent pages omit repeated head/foot (bold); split entries consolidated, Bates numbers in {}]

Page: 1 Document Name: untitled

(L102) COLLECTOR NOTE PAD ED0834
REGION: 09 ACCT OWNER: ED107 05/09/02
COLL NUM: 10:20[/1]
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS, BRUCE
ED BALANCE: 5,453.10 PROJ/ACT CA: 0.00
CA BALANCE: 5,453.10

Date	Source Code	Narrative
12/09/93	EA 789999	LC1 10:45 (gc) ph. res. 310-432-6398 LC1 10:46 T1 WR # LC1 10:46 3SKP skip trace accounts LC1 10:46 Account transferred via G.C. LC1

		10:46 lr #457 1
11/03/94	EA 789999	VX1 4:36 ls #457
11/05/94	EA 789999	VX4 12:18 ls #472
11/29/94	EA 789999	VX5 12:28p ls #457
01/04/95	EA 789999	VX5 6:41p ls #457
02/08/95	EA 789999	TNC 4:51p (gc) ph. pos. 310-422-4230 TNC 4:51p Timed call back 02/15/95 04:54pm TNC 4:51p 3SKP POS DISC
02/09/95	EA 789999	VX1 4:29 ls #460 VX1 4:29 lr #451 1 VX1 4:29 3CRF CBR SCORING F sys Lser 200 03/01/95
03/01/95	EA 789999	VX1 8:57 ls #451 VX1 8:57 lr #457 1 *** Time: 11:22:25 AM {000012} VX1 8:57 3CRF CBR SCORING F sys lser 200 03/21/95
03/08/95	EA 789999	MFP 8:28 Transferred from CEC to SA2
03/21/95	EA 789999	VX1 9:36 ls #457 VX1 9:36 lr #459 1 VX1 9:36 3CRF CBR SCORING F sys lser 200 04/10/95
06/25/96	EA9999	note; recd ltr frm dtr rqsting pnotes per; dtrs rqst=MP DCS rec'd ltr from debtor; SFO pgs: 1
06/26/96	EA9999	note; recd req for pnotes/ordered docs=RF req docs from client; pnotes for debtor/MW; pnote ordered/JN
06/27/96	EA9999	DCS rec'd ltr from debtor; SFO pgs:1

07/03/96	EA9999	req docs from client; requested notes...SW
07/11/96	EA9999	note; recd pnotes for dtr complete/MB
07/12/96	EA9999	docs rec'd from client; SFO pgs: 2
08/27/96	EA9999	note; db req for loan docs--CD
08/28/96	EA9999	note; recd req for pnotes/dox recd 7/12/96/; will resnd per CD req=RF DCS rec'd ltr from debtor; SFO pgs:1
08/30/96	EA9999	note; resent pnotes (G224) per CD req/ MB *** Time: 11:22:25 AM {000013}
01/24/97	EA9999	DCS rec'd ltr from debtor; SFO pgs:1
01/27/97	EA9999	note; per ltr recd 01-24 re-rqsting pnotes; and itmz to ref bck for verf =MP
01/31/97	EA9999	DCS rec'd ltr from debtor; SFO pgs:1
02/18/97	EA9999	DCS rec'd ltr from debtor; SFO pgs: 1; per ltr recd dtr is rqsting us to; cease and desist all coll on dbt =MP debtor,requests no calls at home debtor,requests no calls at work debtor,requests no mail at home debtor,requests no mail at address 2
10/16/97	ED9390	[“]***[”]received TOP hearing/review[“]******[”]
10/20/97	ED9264	[“]****[”] req copy of pn E Esguerra
10/30/97	ED9206	rec'd TOP review, cust states he did not have a high diploma/GED and tht the sch sign his name without his permission, snt cust ATB & Unauthoized Signature appl and copy of pn.

S .Amey

04/03/98 ED9206 rec'd ltr frm cust stating he does not fit in either category, ATB or Unauthorized. Cust still states he does not owe the debt. Cust did not snd back the ATB or Unathorized Sign appl. S.Amey

09/02/98 EA9999 corr rec'd ltr from borr disp WB/JLW validity of
*** Time: 11:22:25 AM {000014}
debt with each agencythat has snt notice of the same
borr also states having rcvd the copy of the p/n offered as proof of a debt but only proves that borr req the ln which he does not disp
but the ln was not completed
after applying for the loan attended only the first class
after that talked to the administratorand informed him he was withdrawing
he told borr all he would have to do was submit wtihdrawl in writing which borr claims he did
naand[sic] never had contact with school again and never rcvd any docs concerning ln until CSC credit then Diversified Collection contacted borr in 1993
and responed promplty no ln had been executed and did not save copies of this exchange
next time borr was contacted regarding this matter was 1/96 and disp again
borr also states confirmed signature on the p /n but advised had no

		knowledge of any activity pertaining to ln have not had response to hearings branch borr answer to these demands has always been[sic end]
09/16/98	EA9999	corr rec'd duplicate of batch WB/JLW 1714 dated 8-31 new batch 571 dated 9-14 J.Walker *** Time: 11:22:25 AM {000015}
11/12/98	PIC307	MI borr sz signed pnote, but was only req the loan. He never rcvd money. Sz dropped out of school after 1 class. Claims nobody contacted him for years. Snt ltr adv word "loan" is clearly marked on pnote. His resp to keep track of his debts & make sure they are settled. Exp pnote - when he signed it, he agreed to pay the loan. Exp students generally dont rcv stud loan money directly. Exp if he bel the school failed to pay the lender a refund, he needs to snd proof to REG09. Ref to AG522 for more info. JScott.
11/15/99	EA9999	recvd corr re mail bor snt in ltr sd disps ln sd never recvd money & withdrew from the schl- sd fls is not oblgtd to py ln bk
12/21/99	EA9999	recvd corr (re mail) ltr sd dsp & reqstd ver of debt to show proof of recpt of ln & we didnt provide him w/that-- sd didnt attnd, formally to w/drew at the end of the first day of class--

sd acct has been held open in err &
DOE can use this for all future
attmps to cll any way we choose to
wont discuss ln w/ cll agncy--
will req for info when we demand for
repmt is snt--(DIS)
*** Time: 11:22:25 AM {000016}

12/28/99 EA9999 recvd corr (re mail) ltr frm bor
sd has never given us a reason to
think he was unable to repay
but in fact wants to make ppa
towrds loan--
sd he proposed ln was never xecuted
& no money was disbursed to bor or
by his authorization--
sd we didnt snd reqstd ver of debt
w/n the 30dys recvd
we placed him on notice w/credit
reporting agency for which we cant
provide proof of--
actions would b unnecessary,
inappropriate, or malicious
maneuver to cause suffering for no
ln excuted--
sd will b frwdding copies of corr to
both Fedrl & State agencies, w/ req's
for action of misreprsntations--
while no furthe reason 4 us 2 keep
acct active, he asks us to forwd
copies of our corr for file when
returning acct to our emplyr--(DIS)

01/12/00 EA9999 recvd corr re mail corr
type Complnt-
State of CO snt in ltr
sd w/ our lack of respnse to possess
verification of the debt, we put a
notice on him
sd ths is a threat to damage his fin

& professionl reputation-
enclsd cpies of previous corr-
also snt in ltr frm State of CO
sd plse rev
*** Time: 11:22:25 AM {000017}
& rspnd w/in 20dys of the dt on ltr-
sd the respnse shld be frm Clctn
Managr, Owner, Officer, or Atty-
sd it shld inclde clctn activiy notes,
cpies of docs & corr-
sd respnse won't be considered
complete until docs are provided-
sd the complaint wld be reviewed &
to see if there is a violtion of the CO
Fair Dbt Clctn Practices Act-
snt IMF & Cmplnt to Contrct
Monitor M.Patterson-
also fwrd cpies to managers..J.Ortiz

01/14/00 EA9999 ["]***["] snt Complaint respnse
Airborne to State of CO w/VR note
pad, to Contct Monitr M. Patterson
also fwrd cpy to Mr.Ciro["]***["]

01/26/00 EA9999 recvd corr (re mail) ltr frm bor
sd it isnt permitted by law 2 cll on
debts t dont xist
we nevr suppld the proof of debt n
our 1st cntct & he has reqstd sevrl
x's-
sd recvd 2 idntcl ltrs t sd we
undrstnd the concerns bor raises &
for him 2 cntct a cll here--
will respnd any asstnc n writing, but
find actvty on acct 2 dt proves it
necssry 4 all xchnges n writing than
verbally-
sd sd we & DOE r unrespnsive to
issues-
found p/n 2 his knwldg is

		unexecuted w/out his consent-- sd *** Time: 11:22:25 AM {000018} was signed off for reason of obliging him 2 repy 2 his xtent the pr & int advnced 2 him, n which case is zero- - ln wasnt made on disbrsmnt dte & no oblgtn by signtr on doc promising 2 repy if xtndd, ln was nevr made-- wants 2 keep all corrspnd 4 his recrds-- (COM)--copies frwdd-- IMF 2 Contract Monitor Mary Patterson[“]*****[”]F.Graves
01/27/00	ED4246	recalled acct per req fm PCA. M.Patterson/ASC
02/07/00	EA9999	recvd corr (re mail) a ltr frm bor sd he recvd our ltr of repmt options but we didnt nclud the only option for him & t was to clear acct to zero bal-- sd req's docs of debt offrd n 1st cntct this is his respns n writing, we havent containd the only choice to him in our offer-- has to have all activity on acct n writing-- wants to b able to respnd w/corrspndnce-- (OTH)[“]*****[”]F.Graves
03/28/00	ED4246	req cy of p-note to be fax to Sandra Miller, Atty Gen Off, Consumer Protection, State of Colorado at fax #303-8665691. M.Patterson/ASC
04/04/00	ED4246	rec'd p-note cy fm file and faxed to Sandra Miller at above #.

		M.Patterson/ASC
04/07/00	EA9999	rec corr re mail.Corr type-Com. Atty Gen of CO snt *** Time: 11:22:25 AM {000019} in ltr sd revwd corr twas snt. Sd notes do not indicate vrfctn to borr. Explns borr cntct w/ us. Explns the CFDCPA sd VR is in violation of the Act. Sd VR must immdtly chng notices to cmply w/ crrnt CO law. The collctn agncys do not warrant a frml adminstrtv hearng for dscplnry actn. Sd VR may appeal the issuance of this ltr by rqstng a hearng w/Collctn Agncy Board. Sd req must be w/in 40 dys of receipt of ltr. Sd a frml cmplnt wl then be issd and case wl be snt for full discplnry hearng. Frwrd cps to TAR, MTP, LPS, and Mary Patterson. Brown per prev notes ..did not frwrd cpy to Mary Patterson. NBrown
05/10/00	ED4246	req file docs for PCA. M.Patterson/ASC
05/23/00	ED4246	sent cy of p-note to PCA. M.Patterson/ASC
06/20/00	ED4246	req orig file, PCA cannot read pnote. M.Patterson/ASC
08/29/00	PIC596	MI-borr states in rather unclear terms that the debt is too old to be

		enforced and that he is disputing certif. for TOP; resp: gv authority for elimination of statute of limitations, gv authorit y for TOP and adv borr recv'd N18 (borr had includ
		*** Time: 11:22:25 AM {000020}
		a copy of the N18 with his ltr), refer to PIC phones. LBrooks
10/03/00	GD IRS635	*TOP*Bruce & Dani B Edwards 2000
10/30/00	EA9999	T/R tt kid sd he is not thre E.Davis T/R disc dscted 303 400 3485 E.Davis T/POE tt E.Davis T/POE tt wmn sd no in to vrfy E.Davis
11/06/00	EA9999	co rr borr snt ltr of disp. C.Burke
11/07/00	EA9999	corr update corr to cltr T.Domes
01/23/01	ED9291	per Vanessa Santos/OGC/HQ req recall acct fr AG524. Bwr filed suit against the dept. JLiu
05/09/02	ED0834	

PF13-LI01 14-L1O2 15-L103 16-L104 17-L105 18-L106 19-L107 20-L108 21-L109
Date: 5/9/2002
Time: 11:22:25 AM

{000021}

#22 5/9/02 (R109) Account Profile

Page: 1 Document Name: untitled
(R109) ACCOUNT PROFILE SCREEN 1 ED107
REGION: 09 ACCT OWNER: ED107 05/09/02
COLL NUM: 10:21
ACCT NO: S * * *[SSN]
ACCT NAME: EDWARDS BRUCE
REQUESTOR: ED0834
AS OF (MM/DD/YY): 08/29/00

ICRP: __

-ORIGINAL PRINCIPAL BALANCE: 2,666.94

-ORIGINAL INTEREST BALANCE: ___

-ORIGINAL FEES/COST BALANCE:___

-TOTAL INTEREST ACCRUED: 2,649.88

-ADMINISTRATIVE COSTS: ___

-PENALTY COSTS: ___

-FEES: ___

LESS CREDITS: SUBTOTAL: 5,316.82

-DEBTOR PAYMENTS: ___

-REFUND TRANSACTIONS: ___

-WRITEOFF TRANSACTIONS: ___

-OTHER ADJUSTMENTS: ___

SUBTOTAL:

CURRENT TOTAL DUE: 5,316.82

PF13-R101 14-R102 15-R103 16-R104 17-R105 18-R106 19-R107 20-R108 21-R109
Date: 5/9/2002
Time: 11:22:39 AM

#104 Objections (to #99 AR) 6/7/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court District of Colorado
2002 JUN-7 PM 5:02 James R. Manspeaker Clerk by s/G Dep. Clk}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff, pro se

v.

UNITED STATES DEPARTMENT OF EDUCATION,
Defendant

Objections Required by Order dated 4/22/02 with Supplemental Designation of the Record

Without waiving any prior objections filed during the proceedings for this abovecaptioned case, by the deadline established in the Order dated 4/22/02, in conjunction with today's filing of the Supplemental Designation of the Record, I hereby file my objections to the administrative record that was sent to me on May 10,2002, that was indicated as the intended submission under defendant's (EDUC's) *Notice of Filing of Administrative Record* on 5/15/02 in defense counsel's May 13, 2002 letter to me (attached).

Besides the objectionable fact that the 5/9/02 certification as the "administrative record" is almost entirely *different* from those EDUC has submitted under identical names earlier in these proceedings-which also carried defense counsel signatures constituting certifications "to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure [was] complete and correct as of the time it is made" [FRCP 26(g)(1)]; that 5/9/02 compilation as the "administrative record" includes a great deal less information relevant to issues raised in my Complaint filed 1/8/01.

I understand *plenary* to mean "complete in every respect." The "copy of Olenhouse v. Commodity Credit

Corporation, 42 F.3d 1560 (10th Cir 1994) [attached] to this Order [dated March 5, 2002];" states, at 1564, it "delineates the standards to which the district court must conform" upon review of an administrative agency case:

> Where questions of due process and sufficiency of the evidence are raised on appeal from an agency's final decision, the district court must review the agency's decisionmaking process and conduct a plenary review of the facts underlying the challenged action. It must find and identify substantial evidence to support the agency's action and may affirm agency action, if at all, only on the grounds articulated by the agency itself. This cannot be done in [a] context...which allows the agency to define the issues on claimant's appeal
> *Olenhouse,* 42 F3.d at 1565-66.

Most of the facts underlying the actions I challenge, both formal and informal, were not disclosed by EDUC until *after* I filed suit. Defense counsel's inference that I am simply mistaking initial disclosures in this litigation for a hearing record-apparently to consist of a very few arbitrarily designated *internal agency documents* (plus a promissory note for which my defense of non-consummation according to its express terms has yet to be met under the burden of proof upon alleging a contract) by which EDUC wishes to *expand* the actual record of review upon my timely 10/16/97 filing-as *limiting* the issues on my appeal, is mistaken in the extreme.

The review I seek as "[p]ursuant to 5USC704" [Compl. #2] (see 5 U.S.C. 704 includes preliminary, procedural, and intermediate agency action, as subject to review, upon review of the final agency action. The protections I claim are under the Administrative Procedure Act, and the standards EDUC must have met are found in its own

loan guarantee and debt collection regulations, as well as those applicable to agencies in general.

In such circumstances, inquiry is required to be substantial and to determine whether EDUC considered all *relevant* factors, whether or not the agency chooses to recognize them.

> Judicial review of both formal and informal agency action is governed by § 706 of the APA...([with *Overton Park,* 401 U.S. at 413-14, 91 S.Ct. at 822] construing [5 U.S.C.] § 706(2)(A)-(D), the "generally applicable" standards). Formal agency action must be set aside...also if the action is unsupported by "substantial evidence" in the hearing record. *Id.* at 414, 91 S.Ct at 822 (construing § 706(2)(E)). These standards **require the reviewing court to engage in a "substantial inquiry."** *Overton Park,* 401 U.S. at 415, 91 S.Ct. at 823...

and,

> ...The **duty of a court reviewing agency action** under the "arbitrary or capricious" standard [of APA § 706(2)(A)] is **to ascertain whether the agency examined the relevant data** and articulated a rational connection between the facts found and the decision made. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.,* 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983). In reviewing the agency's explanation, **the reviewing court must determine whether the agency considered all relevant factors** and whether there has been a clear error of judgment. *Id.* (citing *Overton Park,* 401 U.S. at 416, 91

S.Ct. at 823); see *Sabin v. Butz,* 515 F.2d at 1069 (citing *Overton Park*).

[bold emphases added, both paragraphs]

Of course, I have no objection to *adding* a legible version of the subject Promissory Note and Disclosure Statement for review of all the express written terms and facts related to them, but see no reason to ignore all pre-suit disclosures were of *half-legible versions* (*i.e.,* Compl. Ex. D filed 1/8/01 in reviewing agency compliance with applicable disclosure regulations. Further, defense counsel recently advised me" '[t]he focal point for judicial review of an APA appeal should be the administrative record in existence, not some new record made initially in the reviewing court,' *Camp v. Pitts,* 411 U.S. 138, 142 (1973)," (attached 5/13/02 letter, ¶2), but proceeded to file, as the " Administrative Record," an extremely reduced quantity of different, only recently printed versions of Education's Debt Management Collection System (DMCS) "records" than produced and certified last year for FRCP 26(a)(1) disclosures. This ignores that record keeping, disclosure, review requirements, control of collection contractors and debt collection practices are all components of the Administrative Procedure Act *and* my Complaint.

The Administrative Record I was sent on 5/10/02 (compared not only the data disclosed during these proceedings, but also numerous admissions and statements about the state of the actual agency record of the account in my name) is a remarkable contradiction of defense counsel's further advisement, " '[t]he complete administrative record consists of all documents and materials directly or indirectly considered by the agency,' *Bar MK Ranches v. Yuetter,* 994 F.2d 735,739 (10th Cir. 1993)," *Id.* The disparity is tremendous when one includes materials *indirectly* considered in EDUC's pursuit of its claim against me.

While these objections cannot possibly address the issues to be dealt with in my opening brief, those issues must not be limited by EDUC's preference to ignore facts

and evidence already certified and disclosed during this litigation:

> Isolated bits of evidence, taken out of context and overwhelmed by other evidence, will not support an affIrmance of agency action. By relying on such "evidence," the District Court commit[s] reversible error. Olenhouse v. Commodity Credit Corporation, 42 F3.d 1560, 1578 (10th Cir. 1994);

Again, without trying to make my case in this document, there are Federal Rules of Evidence that apply to government documents and records, party-opponent statements and admissions, hearsay exceptions, etc., that do not afford the paring of the record EDUC wishes:

"An agency's decision is entitled to a presumption of regularity, "but **that presumption is not to shield '[the agency's]' action from a thorough, probing, in-depth review**." Olenhouse at 1574, citing *Overton Park,* 401 U.S. at 415,91 S.Ct. at 823

It is the *Court's* assessment of the record, relevant factors, facts, evidence and reasoning, including whether the agency entirely failed to consider an important aspect of the problem, that controls here, and where the parties' interpretations of those elements may contribute to the determinations, the omission of information cannot.

I am offering these objections and filing my Supplemental Designation of the Record, the majority of which is admittedly materials and information I received from EDUC during these proceedings—but is by no stretch of imagination new or made initially in the reviewing court—for issues I intend to address in my brief. While the issues in my Complaint admittedly are not as limited as EDUC would seek if it had initiated litigation for enforcement of a debt against me, this suit is for review of *agency action;* I am not the defendant in this case, and the facts and evidence are not moot simply by having been hidden (except, of course, as might relate to that portion

of this case contained within the hearing record for formal agency—but that is by no means the entire cause of action, only its trigger).

Respectfully submitted this 7th day of June, 2002.

s/*Bruce Edwards*
Bruce Edwards, Plaintiff pro se
1001 Emporia Street, Aurora, CO 80010-3825
(303) 341-9422[sic] (non-published, home)

U.S. Department of Justice
John W. Suthers
United States Attorney
District of Colorado Civil Division
1225 Seventeenth Street. Suite 700
Seventeenth Street Plaza
Denver, Colorado 80202
(303) 454-0l00 (FAX) (303) 454-0404

May 13, 2002

VIA FEDERAL EXPRESS
Bruce Edwards
1001 Emporia St.
Aurora, CO 80010-3825
RE: *Edwards v. US. Dep't of Ed.,* No. 01-BB-36
Dear Mr. Edwards:

I am in receipt of your letter addressing your objections to the administrative record compiled by the Department of Education.

Your letter seems to assume that because the Department of Education previously submitted documents as part of its initial disclosures in this litigation, those documents must necessarily be included in the administrative record. That is not so. The focal point for judicial review of an AP A appeal should be the administrative record in existence, not some new record made initially in the reviewing court. *Camp v. Pitts,* 411 U.S. 138, 142 (1973). "The complete administrative record consists of all documents and materials directly or

indirectly considered by the agency." *Bar MK Ranches v. Yuetter*, 994 F.2d 735,739 (10th Cir. 1993).

I understand that you believe there are other documents that should be included in the administrative record. I do not agree based on the applicable law and the documents considered by the Department of Education at the time of its decision. Accordingly, I will be submitting to the court the administrative record that was sent to you on May 10, 2002.

Sincerely,

s/*PeterKrumholz*

Peter Krumholz

Assistant United States Attorney

#105 Supplement (to #99 AR) 6/7/02

INDEX to #105 ("SAR")

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court District of Colorado BB 2002 JUN-7 PM 5:02 James R. Manspeaker Clerk by G Dep. Clk}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS
Plaintiff, *pro se*

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

INDEX of Plaintiff Edwards'
Supplemental Designation of the Record

Without any intended or implied endorsement/ adoption of contents or interpretations other than as I Bruce Edwards, plaintiff pro se of above-captioned case ("Edwards" in this Index), or as my wife at my direction, did not personally express or generate; without waiving any of my rights to challenge or to seek authentication/ clarification of data, information or interpretations of said contents; and without intentionally relinquishing any right I might have to similarly supplement or clarify any new or other materials introduced by other parties to this matter subsequent to, or in connection with, this material: I, hereby submit the following listed documents, marked in corresponding, consecutive order in Supplemental Designation of the Record for my case.

Initial Page #	Title/Subject	Date
000001-22	INTENTIONALLY NOT USED to avoid * * * conflicts with * * * EDUC's Administrative Record (Bates Stamp #000001-22) * * *	
000023	EDUC D00 letter dated 1/20/96 and envelope postmarked 1/24/96	1/20/96
000025	EDUC E38 letter dated 4/9/96 and envelope postmarked 4/12/96	4/9/96

Initial Page #	Title/Subject	Date
000027	EDUC E42 letter dated 4/12/96 and envelope postmarked 4/16/96	4/12/96
000029	EDUC E26 letter dated 6/21/96 and envelope postmarked 6/25/96	6/21/96
000031	EDUC envelope postmarked 7/9/96; enclosure(s) not preserved	7/9/96
000032	EDUC G224 letter dated 7/13/96 and envelope * * *	7/13/96
000034	EDUC envelope postmarked 8/12/96; enclosure(s) not preserved	8/12/96
000035	EDUC V70 letter dated 8/15/96 and envelope postmarked 8/19/96	8/15/96
000037	EDUC V70 letter dated 8/24/96 and envelope postmarked 8/28/96	8/24/96
000039	EDUC V70 letter dated 8/28/96 and envelope postmarked 8/29/96	8/28/96
000041	EDUC G224 letter dated 8/29/96, half-legible Promissory Note * * *	8/29/96
000045	EDUC V70 letter dated 9/14/96 and envelope postmarked 9/19/96	9/14/96
000047	EDUC V70 letter dated 10/9/96 * * *	10/9/96
000048	EDUC V70 letter dated 10/11/96 & envelope postmarked 10/16/96	10/11/96
000050	EDUC letter dated 12/26/96 * * *	12/26/96
000051	EDUC G227 letter, (R103) Account Transaction Screen and (R109) Account Profile Screen * * *	1/28/97
000054	EDUC U79 letter dated 8/8/97 and envelope postmarked 8/12/97	8/8/97
000056	EDUC's N18 system letter: Debt Statement, Notice * * * Offset * * * and blank Request for Review form	9/5/97
000062	EDUC's Hearings Branch * * *: cover letter for two post-1/86-loan discharge applications * * *	10/30/97
000075	Edwards' file copy of EDUC * * * "LTR FRM CUST" logged in (LI02)	2/21/98

Initial Page #	Title/Subject	Date
	Collector Note Pad on 4/3/98	
000077	EDUC A50 letter dated 7/24/98* * *	7/24/98
000078	EDUC X68 letter dated 8/13/98* * *	8/13/98
000079	Copy from Edwards' files of EDUC * * * "LTR FROM BORR" logged in (LI02) Collector Note Pad 9/2/98	8/24/98
000080	EDUC Debt Collection Service Regional Director's "SNT LLT" logged 11/12/98 (LI02) * * *	11/12/98
000082	EDUC A50 letter dated 10/29/99 & envelope postmarked 11/11/99	10/29/99
000084	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (LI02) Collector Note Pad 11/15/99	11/11/99
000085	EDUC 457 & 442 letters dated 11/24/99; env'p postmarked 12/1/99	11/24/99
000088	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (LI02) Collector Note Pad 12/21/99	12/10/99
000089	EDUC 443 1etter dated 12/10/99 & envelope postmarked 12/15/99	12/10/99
000091	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (LI02) Collector Note Pad 12/28/99	12/17/99
000092	EDUC 444 letter dated 12/24/99 & envelope postmarked 1/11/00	12/24/99
000094	EDUC 457 * * * letters postmarked 1/13/00 (1 of 2 identical sets)	1/9/00
000096	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (L102) Collector Note Pad 1/26/00	1/21/00
000097	EDUC 445 letter dated 1/16/00 & envelope postmarked 1/24/00	1/16/00
000099	Edwards' file copy of EDUC * * * "RECVD CORR" logged in (L102) Collector Note Pad 2/7/00	1/28/00
000100	Edwards' file copy of EDUC * * *	3/29/00

Initial Page #	Title/Subject	Date
	"RECVD CORR" w/evp logged in (L102) Collector Note Pad 4/7/00	
000104	Edwards' file copy of public record/evp on final disposition of "RECVD CORR" logged 4/7/00 in (L102) Note Pad; "Exhibit A" is 'COMPLAINT RESPNSE' logged in (L102) Collector Note Pad 1/14/00	6/1/00
000111	Edwards' file copy * * * for "REQ ORIG FILE, PCA CANNOT READ P-NOTE" * * * PCA (private collection agency)] logged 6/20/00 in (L102) Note Pad	6/12/00
000114	EDUC 11/4/99 Equifax file request: uninterested party/normal business record [note: not logged in (LI02) Collector Note Pad]	6/20/00
000115	Edwards' file copy of 8/15/00 cover letter/packet * * * logged * * * in 8/29/00 (L102) Note Pad]; * * *	8/15/00
000122	Treasury FMS 8/22/00 response (as 2nd addressee of Edwards' 8/15/00 triple mailing); envelope * * *	8/23/00
000124	EDUC Chicago Service Center * * * "RESP...REFER TO PIC PHONES" (as 3rd addressee of 8/15/00 * * * triple mailing); * * *	8/31/00
000127	Treasury FMS 9/22/00 offset * * * [EDUC logged 10/3/00 (LI02) Note Pad/processed 10/2/00 (1100) Fed Offset Acct Info Screen]	9/22/00
000129	EDUC A50 letter dated 9/26/00 * * *	9/26/00
000131	EDUC 377 letter dated 10/29/00 & envelope postmarked 11/2/00	10/29/00
000133	Edwards' file copy of EDUC * * * "BORR SNT LTR OF DISP" * * * 11/6/00 (LI02) Collector Note Pad	10/30/00

Initial Page #	Title/Subject	Date
000134	EDUC 399 letter dated 1118100 & envelope postmarked 11/13/00	11/8/00
000136	EDUC A58 letter dated 11/8/00 & envelope postmarked 11/14/00	11/8/00
000138	EDUC 400 letter dated 12/14/00 & envelope postmarked 12/18/00	12/14/00
000140	EDUC 377 letter dated 1/4/01 & envelope postmarked 1/5/01	1/4/01
000142	EDUC 399 letter dated 1/18/01 & envelope postmarked 1/18/01	1/18/01
000144	Edwards' file copy of EDUC * * * "SAME AS ABOVE [borr snt ltr of disp]. NO LONGER WITH AG. NO RESP." * * * 2/1/00 (L102) * * *	1/25/01
000145	EDUC U19 letter dated 2/12/01 & envelope postmarked 2/14/01	2/12/01
000147	EDUC counsel * * *("FRCP") 26(g)(1) certification of FRCP 26(a)(1) *Defendant***'s Initial Disclosures* copied to Edwards **[redaction on items *outside* normal custody or control]** & evp for entire disclosure.	**4/26/01**
000153	EDUC FRCP 26(a)(1)(B) B. * * * [CSAC] Exhibit 1: Contact History Report dated December 31, 1992; marked #US000014 * * * 4/26/01	12/31/92
000154	EDUC FRCP 26(a)(1)(B) C. * * *Debt Management Collection System Database and the National Student Loan Data System ["DMCS/NSLDS"] Exhibit 1, (L102) Collector Note Pad printed 4/18/01; marked #US000015 to Edwards 4/26/01	4/18/01
000155	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 1, (L102) Collector Note Pad printed 1/23/01; marked #US000016-25 to Edwards 4/26/01	1/23/01

Initial Page #	Title/Subject	Date
000165	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 2, (L106) Letter History Screen printed 4/18/01 * * * #US000026-28 to Edwards 4/26/01	4/18/01
000168	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 3, (L108) Audit Trail Info[] Screens printed 4/18/01; marked #US000069-70 to Edwards 4/26/01	4/18/01
000170	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 4, (L109) Debt Level Info[] Screen printed 1/23/01 * * * explanatory * * * #US000071-2 * * *	1/23/01
000172	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 5, (L130) Rehabilitation and Consolidation Screen printed 4/18/01; marked #US000073* * *	4/18/01
000173	EDUC FRCP 26(a)(1)(B) C. * ** Exhibit 6, (R101) Research Account Screen printed 4/18/01; marked #US000074 to Edwards 4/26/01	4/18/01
000174	EDUC FRCP 26(a)(1)(B) C. DMCS/NSLDS Exhibit 7, (R103) Account Transaction Screen printed 1/23/01 with explanatory * * * #US000075-6 to Edwards 4/26/01	1/23/01
000176	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 8, (RI04) Payment Detail Screen printed 4/18/01 with explanatory * * * #US000077* **	4/18/01
000178	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 9, (R107) GSL Program Specific Screen printed 1/23/01 with explanatory * * * #US000079-80* * *	1/23/01
000180	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 10, (R109) Account Profile Screen 1 printed 4/18/01 with explanatory * * * #US000081-2 * * *	4/18/01

Initial Page #	Title/Subject	Date
000182	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 11, (R111) Referral History Screen printed 4/18/01; marked #US000083 to Edwards 4/26/01	4/18/01
000183	EDUC FRCP 26(a)(1)(B) C. * * * Exhibit 12, (I100) Federal Offset Account Info Screen "for Process Years 1990-2001" * * * 1/23/01 with explanatory * * * #US000084-5 * * *	1/23/01
000185	EDUC FRCP 26(a)(I)(B) C. * * * Exhibit 13: "Printouts from NSLDS showing all Title IV loans * * * 1/23/01; marked #US000086-9 * * *	1/23/01
000189	EDUC A50 letter dated 5/1/01 & envelope postmarked 5/2/01	5/1/01
000191	EDUC 08A letter dated 5/9/01 & envelope postmarked 5/11/01	5/9/01
000193	EDUC W41 letter dated 5/17/01 & envelope postmarked 5/18/01	5/17/01
000195	Edwards' file copy of response to 5/1 & 5/9/01 collection contractor demands; [* * * post-4/18/01 (LI02) CollectorNote Pad entries not disclosed to Edwards* * *]	5/22/01
000196	EDUC 5/29/01 counsel letter with legible Promissory Note * * * to Edwards/postmarked 6/5/01	5/29/01
000200	EDUC FRCP 26 & 33 Defendant'sResponses to Plaintiff's Interrogatories (No. 1-33 * * * redaction]. Postmarked 6/29/01	6/25/01
000217	Edwards' file copy of Plaintiff's Objections to Defendant's Responses to Plaintiff's Interrogatories (No. 1-33 * * * redaction]	7/7/Ol
000226	Edwards' file copy 7/27/01 service: Plaintiffs Interrogatories #34-50	7/27/01

Initial Page #	Title/Subject	Date
	* * * Requests for Documents and Complete Legible Initial Disclosures and Requests for Admissions [* * *redaction]	
000240	EDUC written, as follow-up of 8/27/01 verbal, objections and request * * * amend interrogatories #34-50; postmarked 8/28/01	8/28/01
000242	Edwards' follow-up to 8/27/01 EDUC * * * verbal request * * * redaction]	8/28/01
000247	EDUC Defendant's Answer to Plaintiffs Requests for Admissions (dated 7/27/01) * * * redaction]. Postmarked 9/4/01	9/4/01
000256	EDUC Defendant's Responses to * * * Interrogatories (#34-50* * *) and Requests for Production * * * (#1-25 served 7/27/01) * * *	9/7/01
000278	EDUC counsel hard copy * * * faxed declaration page of 9/7/01 mailing***	9/10/01
000281	EDUC FedEx delivery/cover of partial * * * as FRCP 26 & 33/34 EDUC 9/10/01 production * * *	9/10/01
	4/20-28/92 Review of CSAC	-
000283	GSL Tape Dump Procedures* * *	7/10/92
000303	EDUC 9/10/01 production: * * * 1/94-2/94 Review of Data Supporting CSAC's Monthly Claims & Collections * * *-interim report	6/10/94
000326	EDUC 9/10/01 prod* * * 1/98-2/98 Examination of Operations, Systems, Organization & Management of EdFund and CSAC-report	8/14/98
000338	Edwards' file copy (w/mis-dated 9/10/01 cert. of svc) of Objections to Sufficiency of Defendant's * * * Admissions * * * redaction]	9/12/01

Initial Page #	Title/Subject	Date
000345	EDUC U19 letter dated 9/17/01 & envelope postmarked 9/19/01	9/17/01
000347	Edwards' file copy on reissuing discovery objections * * *	10/22/01
000349	EDUC supplemental production as FRCP 26/3, [redaction * * * request #15 and as noted * * * 4/26/01] * * 8	9/18/01
000432	EDUC FRCP 26 trial exhibit disclosures * * * [see 4/26/01 note on redaction]; postmarked 1/10/02	1/10/02
000454	Edwards' certified 1999 * * * High School Diploma, Aurora, Colorado	12/99
000455	Edwards' FRCP 26 cover/receipt for * * * trial exhibits (1-114) plus hard copy of exhibit #49 * * * residential rental agreement dated 7/11/92	1/14/02
000457	EDUC Defendant U.S. Department of Education's Answer to Plaintiffs' Complaint dated 3/19/01* * *	3/19/01
000469	Edwards' enlarged (120-125%) Promissory Note * * * copy of copy received 6/6/01 * * *	6/4/85

SAR 51-3: 1/28/97 History letter

{DCS} *Diversified Collection Services, Inc.*
P.O. Box 5700, 555 McCormick St.,
San Leandro, CA 94577-0757 Main Line (800) 766-7617

January 28, 1997

BRUCE EDWARDS
1001 EMPORIA ST
AURORA, CO 80010-3825

RE: Diversified Collection Services
CLAIM OF: United States Department of Education
ACCOUNT NO.: * * *[SSN] BALANCE: $5,701.34

Dear BRUCE EDWARDS:

You have requested an itemization of your account. The enclosed figures accurately represent your account history according to our records.

We will hold your account for ten (10) days from the date of this letter to give you the opportunity to evaluate this information and to make arrangements to repay this obligation.

Failure to respond within the allotted time may result in your account being referred back to the U.S. Department of Education for litigation through the U.S. Department of Justice. The Internal Revenue Service may also be authorized to withhold any income tax refunds. Federal law requires that we inform you this is an attempt to collect a debt and any information obtained will be used for that purpose.

If you should have any questions in regards to this matter, you may contact: Diversified Collection Services PO Box 5026 HAYWARD CA 94540 (800) 766-7617

Encl.

G227

[2/5/97 With an effective date in 1993 regarding a promissory note signed in 1986[sic] which was not executed for requested amount—loan was not received! Please update your records and advise all parties to whom you report. (See my August 1996 communication.) Also, kindly cease and desist all further attempts to collect this non-existent loan.]

(R109) ACCOUNT PROFILE SCREEN 1
REGION: 09 ACCT OWNER: AG480 01/28/97
COLL NUM: 99999 16:06
ACCT NO: S * * *[SSN]
ACCT NAME: EDWARDS BRUCE
REQUESTOR: EA98108 AS OF (MM/DD/YY):
01/28/97
-ORIGINAL PRINCIPAL BALANCE:2,666.94
* * *
-TOTAL INTEREST ACCRUED:1,885.35
* * *
-FEES:
LESS CREDITS: SUBTOTAL: 4,552.29
* **
SUBTOTAL:
CURRENT TOTAL DUE: 4,552.29
PROJECTED/ACTUAL COLL AGENCY FEES:1,138.07
TOTAL PAYOUT: 5,690.36
PF13-R101 14-R102 15-R103 16-R104 17-R105 * * *

(R103) ACCOUNT TRANSACTION SCREEN 01/28/97
REGION: 09 ACCT OWNER: AG480 16:05
ACCT NO: S***[SSN]
ACCT NAME: EDWARDS BRUCE
DATA HAS BEEN ARCHIVED: ( )
ED BALANCE: 4,552.29 PROJ/ACT CA: 1,138.07
CA BALANCE: 5,690.36
TOTAL PMT: 0.00 NET ADJ TRANS: 0.00
PAGE 1 OF 1
EFFECTIVE DATE 06/14/93 TOTAL
PAYMENT 1,112.05-
TRAN TP: IA RS: ___ INSTRUMENT
NUMBER: 0000000000
SEQ NUMBER 000130 IN TP ___ ORIG-B.
POSTCL IAP
SRC NBR IAP CRED SITE ED POSTING
DATE 06/26/93 S: _
PF13-R101 14-R102 15-R103 16-R104 17-R105 * * *

SAR 100-2: 3/29/00 Colo. Admonition

{STATE OF COLORADO
1876
NIL SINE NOMINE}

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

KEN SALAZAR Attorney General
BARBARA MCDONNELL Chief Deputy Attorney General
ALAN J. GILBERT Solicitor General

STATE SERVICES BUILDING
1525 Sherman Street 5th Floor
Denver, Colorado 80203

Phone (303)866-4500
FAX (303) 866-5691

March 29, 2000
Certified Mail # P 784 069 996

Mr. Todd Ruzicka
Director of Quality Control
Van Ru Credit Corporation
10024 Skokie Blvd
Skokie IL 60077

RE: Letter of Admonition - Complaint by Bruce Edwards
Section 12-14-105 (3)(a) C.R.S.
Section 12-14-109 (1)(f) C.R.S.
Section 12-14-109 (2) C.R.S.
Colorado Collection Agency License # 101557

Dear Mr. Ruzicka:

This office has reviewed the consumer complaint filed against your collection agency by the above-mentioned consumer, your response, and any other investigatory information gathered. The consumer disputed the debt the agency was attempting to collect. The consumer also stated that the agency failed to provide requested verification of the debt. Your agency responded by letter dated January 13, 2000 from Director of Quality Control Todd Ruzicka. The response denied any improper activities, stating that the original creditor provided the consumer with verification of the debt on numerous occasions.

Your agency notes indicate you received the consumer's written dispute of the debt November 15, 1999. It appears that this dispute letter was based on the Department of Education's notice to the consumer dated October 29, 1999. Your agency notes do not indicate Van Ru Credit Corporation sent verification to the consumer. Your agency's validation notice dated November 24, 1999 did not address the consumer's request for verification, but did advise the consumer "if you do not dispute the validity of this debt, or any portion of this debt, in writing, within 30 days after receipt of this notice, we will assume it is valid. If you do dispute this debt, in writing, within the 30 day period, we will obtain verification of the debt or a copy of the judgment and will mail a copy of such verification or judgment to you." The second notice from your agency, also dated November 24, 1999, indicated your agency's receipt of the consumer's dispute of and request for validation of the debt. This second notice advised the consumer to contact your agency by telephone. The third notice dated December 10, 1999 stated that the consumer had "ignored all previous notices requesting that you honor your obligation to the United Stated Department of Education." Your agency notes of December 21, 1999 indicate your receipt of the consumer's second and third letters of dispute and request for verification dated December 10, 1999 and December 17, 1999 respectively. In addition, your agency notes indicate your continued collection efforts from November 30, 1999 through at least January 12, 2000. I placed a telephone call to you on March 28, 2000 and verified the account is closed and returned to the creditor effective February 1, 2000.

The Colorado Fair Debt Collection Practices Act (CFDCP A or the Act) § 12-14-1 09 (2) states "If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in paragraph (c) of subsection (1) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original

creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of judgment or the name and address of the original creditor and mails a copy of such verification or judgment or name and address of the original creditor to the consumer." In your reply dated January 13, 2000, you stated that the original creditor had provided the consumer with debt verification several times. This does not relieve the collection agency of its legal obligations under §12-14-109 (2) of the Act. Your agency did not provide the consumer with the requested information upon timely receipt of written request and your agency continued communicating with the consumer. This is a violation of§12-14-109 (2) of the Act.

The CFDCPA §12-14-105(3)(a), (b) and (c) states "(a) If consumer notifies a debt collector or collection agency in writing that: (I) The consumer wishes the collection agency to cease contact by telephone at the consumer's place of employment, then no such further contact by telephone shall be made; (II) The consumer refuses to pay a debt or the consumer wishes the collection agency to cease further communication with the consumer, then the debt collector or collection agency shall not communicate further with respect to the debt, except: (A) To advise the consumer that the collection agency's further efforts are being terminated; (B) To notify the consumer that the collection agency or creditor may invoke specified remedies which are ordinarily invoked by such collection agency or creditor; or (C) Where applicable, to notify the consumer that the collection agency or creditor intends to invoke a specified remedy permitted by law. (b) If such notice from the consumer is made by mail, notification shall be complete upon receipt. (c) In its initial written communication to a consumer, a collection agency shall include notification of the consumer's rights under this subsection (3). If such notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact." Your initial

notice does not carry this required information. This is a violation of §12-14-105(3) (c) of the Act. You must immediately change your notices to comply with current Colorado law.

The CFDCP A § 12-14-109(1) (f) and (g) state that the validation notice must contain the following information: "(f) That collection agencies are licensed by the Collection Agency Board. The address of the Board shall also be disclosed." and "(g) That consumers shall not send payments to the Collection Agency Board." Your initial notice dated November 24, 1999 does not include section (g). This is a violation of §12-14-109(1)(g) of the Act. In addition, your advisory required by § 12-14- 109(1)(f) should reference the Collection Agency "Board". This is not, however, a basis for this admonishment. You must immediately change your notices to comply with current Colorado law.

The collection Agency's actions do not warrant a formal administrative hearing for disciplinary action but are not correct. As a result, this letter of admonition is issued pursuant to §12-14-130(10), C.R.S. (1998).

You may appeal the issuance of this letter of admonition by filing a written request for a hearing with the Collection Agency Board. The request must be received within forty (40) days of the date of this letter and mailed to the address printed on this letter. A formal complaint will then be issued and the case will be set for a full disciplinary hearing.

Sincerely,

s/*Laura E.Udis*
LAURA E. UDIS
Executive Director
Collection Agency Board
(303) 866-5706
(303) 866-5691 (FAX)

cc: Bruce Edwards

SAR 104: 6/1/00 Admon'n Withdrawal

{STATE OF COLORADO
1876
NIL SINE NOMINE}

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

KEN SALAZAR Attorney General
BARBARA MCDONNELL Chief Deputy Attorney General
ALAN J. GILBERT Solicitor General

STATE SERVICES BUILDING
1525 Sherman Street 5th Floor
Denver, Colorado 80203

Phone (303)866-4500
FAX (303) 866-5691

June 1, 2000

~~Mr. Todd Ruzicka Director of Quality Control~~
~~Van Ru Credit Corporation~~
~~10024 Skokie Blvd Skokie IL 60077~~

RE: Withdrawal of Letter of Admonition
Complaint of Bruce Edwards

Dear Mr. Ruzicka:

The March 29, 2000 letter of admonition issued to your agency in connection with the complaint of Bruce Edwards is hereby withdrawn. Van Ru Credit Corporation appealed the leter of admonition. Rather than proceeding to an evidentiary hearing involving a new determination of whether any violations of the Colorado Fair Debt Collection Practices Act occurred, your agency and I agreed to enter into a Stipulation. Withdrawal of the admonishment was a condition of the stipulation.

A copy of the stipulation is being provided to your counsel, Lawrence Laskey, and to Bruce Edwards under cover of this letter.

Sincerely,

s/*Laura E. Udis*
LAURA E. UDIS Executive Director
Collection Agency Board
(303) 866-5706 (303) 866-5691 (FAX)

cc: Lawrence Laskey, Esq.
✓ Bruce Edwards
* * * [STIPULATION]; [Ex. A (*see* 1/13/00 Van Ru letter, p 181 *supra*; Ex. B (*see* 12/10/99 letter, p. 174 *supra*)]

SAR 153: 12/31/92 CSAC Contact Hist.

FEB. 01 2001 2:18 PM EDFUND POST DEFAULT SERVI
916 526 7209 P. 2

***[account in other person's name on left side of page]
SSN: * * * D14
JOB NAME: JSAJ220F DATE: 12/31/92
REPORT: JSAR220F

CALIFORNIA STUDENT AID COMMISSION
CONTACT HISTORY REPORT

SSN: [SSN] EDWARDS, BRUCE
*623 E. BROADWAY 1, LONG BEACH, CA, 90802
310-432-6398

DATE	CLK	CO	INDX	DESCRIPTION
120892	BCH	CAR	1000	CANCEL/RETRN .00 25 B
120292	BCH	CAR	1000	CANCEL/RETRN .00 .25 B
113092	DCS	DDU		
093092	BCH	M1	1010	CREDIT BUREAU – SUBROGATED
092992	BCH	CLM	0000	FEDERAL SUB//LOANS SENT TO FED
012292	DCS	DDS		
120691	DCS	DDS		
120491	BCH	ADR	1000	
112091	242	UO	0000	BAD ADDRESS
110891	DCS	DDS		
101791	BCH	LTR	0000	FTU OFFSET LETTER FTBLETTR 005
101091	DCS	DDS		
100791	209	U0	0000	BAD ADDRESS
091291	DCS	DDS		
091191	BCH	LTR	0000	IRS OFFSET LETTER

IRSLETTR 005

081691	DCS	DDS		
071891	DCS	DDS		
070591	DCS	DDS		
060791	DCS	DDS		
050891	DCS	DDS		
040491	DCS	DDS		
030591	DCS	DDS		
020691	DCS	DDS		
011591	DCS	DDS		
122790	242	UO	0000	BAD ADDRESS
121290	DCS	DDS		
111290	DCS	DDS		
110490	BCH	LTR	0000	FTU OFFSET LETTER

FTBLETTR 004

100990	DCS	DDS		
092490	BCH	LTR	0000	IRS OFFSET LETTER

IRSLETTR 004

091790	BCH	ADR	1000	623 E BROADWAY 1

LONG BEACH CA90802

080890	DCS	DDS		
071790	DCS	DDS		
062690	DCS	DDS		
043090	BCH	M1	1010	

CREDIT BUREAU – CLAIM

043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		

043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	DCS	DDS		
043090	BCH	ASN	1010	ASSIGNMENT
				2666.94 24 F
121389	224	DOU	0000	
121389	224	S4	0000	213-432-6398 MACH
113089	224	S4	0000	213-432-6398 MACH
103189	BCH	LTR	0000	SPECIAL COLLECTION
				LETTER BILL0632 001

[SSN] *E14 * * * [repeat heading]*

DATE	CLK	CO	INDX	DESCRIPTION
102789	BCH	LTR	0000	FTU OFFSET LETTER
				FTBLETTR 003
092789	BCH	LTR	0000	IRS OFFSET LETTER
				IRSLETTR 002
062189	262	DDU	0000	
062189	262	S4	0000	213-432-6398
040789	262	ADR	1000	2265 EARL;
				LONG BEACH; CA; 90806
033189	BCH	ASM	1010	SPECL ASGNMT
				2666.94 04 F
102688	BCH	LTR	0000	FTU OFFSET LETTER
				FTBLETTR 002
101388	BCH	CAR	1000	CANCEL/RETRN
				.00 15 B
100388	BCH	ASN	1010	CANCEL/RETRN
				2666.94 15 F
092488	BCH	LTR	0000	IRS OFFSET LETTER
				IRSLETTR 001

032988 236 MF 0000 8700766

EDWARDS BRUCE

092887 BCH ADR 1000 623 E BROADWAY 1;

LONG BEACH; CA; 90802

061987 BCH BC 1000 PCLM CANCEL 801178

00 R 1 .00 .00 .00

040287 214 M1 0000 C2038101/CA

040287 214 LP 0000 870316 801178

032687 230 CC 0000

032687 230 A3 0000 REF 1&2

032687 230 R7 0000 REF1#213 436 4523

032687 230 B1 0000

032587 230 R4 0000 REF3#213 591 4544

032587 230 R3 0000 REF2#213 636 7442

032587 230 R1 0000 REF 1

032587 230 B1 0000

032487 230 B1 0000

031987 237 CLM 1010 REJECT CLAIM 801178

870319 0191

031987 237 M1 1010 NO CM MARY

031987 237 JJ 1010 870316 801178

031987 252 M1 1010 C2038101/CA

031987 252 LC 101 870316 801178

022687 CON ADR 100 PO BOX 9821

LONG BEACH CA90810 21343263

{US000014}

SAR 170: 1/23/01 (L109) Debt Level Info.

Page: 1 Document Name: untitled
(L109) DEBT LEVEL INFORMATION SCREEN ED0703
REGION: 09 ACCT OWNER: AG524 01/23/01
COLL NUM: 99999 13:42
ACCT NO: S * * *[SSN] DEBT LOC CODE: AG524
DEBT NO: G199309030022801 TYPE DEBT: GSL
ACCT NAME: EDWARDS, BRUCE
GUARANTY AGENCY: CA706 CALIFORNIA
ORIGINATING LENDER:
801178 B OF A TRUSTEE C/O CMSC
ORIGINATING SCHOOL:
TRAVEL AND TRADE CAREER INSTITUTE
CLAIMING LENDER AND ADDRESS:
801178 B OF A TRUSTEE C/O CMSC
PO BOX 92025 LOS ANGELES CA 90009-2025
COMAKERS: ___
CURRENT PRINCIPAL: 2,666.94
CURRENT INTEREST: 2,511.07
CURRENT PENALTY: .00 CURRENT
ADMIN: .00
CURRENT FEES: .00 ED
BALANCE: 5,178.01
PROJ/ACT CA : 1,294.50 CA
BALANCE: 6,472.51
REHAB/CON FEE: 957.93 REHAB/CON
BAL: 6,135.94
RATE: 8.00% CREDIT BUREAU
STATUS: CO
FIRST REPORTED: 08/29/93 LAST
REPORTED: 05/28/94
FDP FLAG: N ACCT AWG FLG: N DOJ
FLAG: N
TOP STAT: 01-5
ICRP: ___
PF13-L101 14-L102 15-L103 16-L104 17-L105 18-L106 19-
L107 20-108 21-L109 22-L1
DATE: 1/23/01 TIME: 2:42:50 PM **{US000071}**

SAR 179: "R107" explanatory sheet

(R107) GSL PROGRAM SPECIFIC SCREEN 08/01/97
REGION: 04 ACCT OWNER: ED113 13:14
ACCT NO: 999999999 ACCT NAME: DEBTOR DAN
PREV NAME: ___ STUDENT NAME: ___
STUDENT ID: 0 PAGE 1 OF 1
DEBT NO: G199304050022701 *Identification number for specific loan*
DATE ENT: 05/25/93 *Date ED accepted assignment from guarantor*
PRINCIPAL: 2,857.58 INTEREST: 73.68 *Principal & interest posted by guarantor when loan assigned to ED*
PENALTY: ___ ADMIN: ___ FEES: ___
LENDER: 899999 ORGAGY: KD620 SID: 001944 *lender, guarantor, and school ID numbers*
LNGUARDT: 9/18/89 DEFTDTE: 01/15/91 *Loan guarantee & default dates*
LOANTPE: STAF *Loan type: STAF = Stafford SLS, PLUS, CON*
CBOCCDATE: 11/01/91 *guarantor first reported to credit bureaus*
GA BAL DATE: 11/01/93 *date guarantor last posted accrued interest*
ORGCLMPAYDTE: 10/31/91 *Date guaranty claim paid*
PRINPDLENDER: 2,625.00 *Principal paid to lender in guaranty claim*
INTPDLENDER 186.28 *Non-cap'd Interest paid to lender in guaranty claim* INTCAPBYGA: 286.28 *total interest cap'd by lender + by guarantor*
AMTCOLBYGA: 425.00 *Amount collected by guarantor*
LASTPDGA: 07/29/93
ORGSOLDT: 12/01/92 LITIND: N JUDMTDT: ___
JUDMTEXPDT: ___ WITHDRAWAL: 6/11/90
DISB AMOUNT: 2,625.00 DISBDTE: 12/27/89
RATE: 8.00% *Interest rate on loan when assigned to ED*

R107 screen displays information regarding history of Guaranteed Student Loan/Federal Family Education Loan

{US000080}

SAR 183: 1/23/01 (I100) Fed. Offset Info.

Page: 1 Document Name: untitled
(I100) FEDERAL OFFSET ACCOUNT INFO SCREEN
FMS IND: A A/I: ___ ED0703 01/23/01
ACCT NO: S * * *[SSN] 13:40
PROCESS YEAR: 2000
SUBAGENCY: 90 SAN FRANCISCO SERVICE CENTER
PHONE: (800) 621-3115* * *
SUBAGENCY SELECTIONS: ___
NAME: BRUCE EDWARDS
DEBT NO: * * *[SSN]
CERTIFICATION IND: R

TOP ORIGINAL BALANCE:	$5,169.94
TOP CURRENT BALANCE:	$4,945.27
LAST DECREASE DATE: ___	
DECREASE AMOUNT:	$.00
LAST INCREASE DATE: ___	
INCREASE AMOUNT:	$.00
REPLACEMENT DATE: ___	
REPLACEMENT AMOUNT:	$.00
REFUND DATE DATE: ___	
ED/GA REFUND AMOUNT:	$.00
REVERSAL DATE: ___	
REVERSAL AMOUNT:	$.00

OFFSET DATE: 09/22/2000
PROCESS DATE: 10/02/2000
TOP OFFSET AMOUNT: $234.32

6 – FEDERAL FUNDS HAVE BEEN OFFSET

ACCOUNT NOT CERTIFIED; NO ACTION ALLOWED

PF9-NEXT YEAR 10-LAST YEAR 3-EXIT PF13-I100
14-I110 15-I120
DATE: 1/23/01
TIME: 2:41:21 PM

{US000084}

SAR 379-80: Request For Review form

REQUEST FOR REVIEW

NAME: ___ SSN: ___ CURRENT ADDRESS: ___

If you object to offset against your Federal refund and/or payment for the student loan described in the Loan Statement or notice, you can use this form to request a review or hearing. If you object **ONLY** because you believe you cannot afford to pay this debt, but you wish to arrange payment terms, **DO NOT USE THIS FORM. INSTEAD,** write or call the Contact listed on the Loan Statement.

IMPORTANT. You should request and review copies of the records evidencing your loan before you complete this statement. See the Notice of Proposed Offset of Federal Income Tax Refund or Other Payment for instructions on how to request these records.

I. Check ONLY ONE of the following:

A. ( ) I want a review of my objection based on this written statement and the record in my loan file. **COMPLETE PARTS II AND IV OF THIS FORM.**

B. ( ) I want an in-person hearing in the city shown on the Loan Statement to present my objection. I understand that I must pay my own expenses to appear for this hearing. **COMPLETE PARTS II, III, AND IV OF THIS FORM.** Provide a telephone number where you can be reached during the day: ___

C. ( ) I want a hearing **by telephone**. **COMPLETE PARTS II, III, AND IV OF THIS FORM.** Provide a telephone number where you can be reached during the day: ___

II. Check the objections that apply. **ENCLOSE** the documents described here (if you do not enclose documents, ED will consider your objections based on the information on this form and the records in ED's file on this loan):

1. ( ) I do not owe the full amount shown because I repaid some or *all of this* loan. **ENCLOSE** copies of the front and back of checks, and copies of money orders and receipts for payments made on the loan.
2. ( ) I am making payments on this loan as required under the repayment agreement I reached with the holder of the loan **ENCLOSE** copies of repayment agreement and front and back of payment checks.
3. ( ) I filed for bankruptcy and my case is still open. **ENCLOSE** copies of **any court** document showing name of court and case number.
4. ( ) This loan was discharged in bankruptcy. **ENCLOSE** copies of discharge order and the schedule of debts filed with the court.
5. ( ) I am totally and permanently disabled – unable to work and earn money because of an impairment that is expected to continue indefinitely or result in death.
6. ( ) This is not my Social Security Number, **and I** do not owe this loan. **ENCLOSE** copies of your Driver's License or other identification issued by a government agency and your Social Security Card.
7. ( ) I believe that this loan is not an enforceable debt in the amount stated because: **(EXPLAIN** any other reason you object to the collection of this loan amount by offset against your Federal refund and/or payment. Be as specific as possible. **ENCLOSE** any records that support your reasons.
8. ( ) I used this loan to enroll in ___ (school) on or about __/__/__, and I withdrew from school on or about __/__/__. I believe that I am owed, but have not been paid, a refund from the school of $___. **ENCLOSE** any records you have showing withdrawal.
9. ( ) I used this guaranteed student loan to enroll in ___ (school) on or about __/__/__, and I was unable to complete my education because the school closed.
10. ( ) I had no high school diploma or GED when I enrolled at ___ (school) with this guaranteed student loan. The school improperly determined my ability to

benefit from the training offered and I was not able to obtain a job in the occupation for which it trained me.

11. ( ) When I borrowed this guaranteed student loan to attend ___ (school), I had a condition (physical, mental, age, criminal record) that prevented me from meeting State requirements for performing the occupation for which it trained me.

12. ( ) I believe that ___ (school) without my permission signed my name on the loan application, promissory note, loan check or electron funds transfer (EF) authorization.

[If you check 9, 10, 11, or 12, you will be asked to provide additional information in order to avoid offset; parent borrowers should answer 8 – 12 about the student.]

III. IF YOU WANT AN IN-PERSON OR TELEPHONE HEARING, YOU MUST COMPLETE THE FOLLOWING:

The loan records and documents I submitted to support my statement in Part II do not show all the material (important) facts about my objection to collection of this loan. I need a hearing to explain the following important facts about this loan: (**EXPLAIN** here the additional facts that you believe make a hearing necessary. Use a separate sheet of paper if necessary. If you have already fully described these facts in your response in Part II, **WRITE HERE** the number of the objections in which you described these facts ___.)

Note: If you do not receive an in-person or telephone hearing, you objection will be reviewed, based on information and documents you supply with this form and on records in your loan file.

IV. I state under penalty of perjury that the statements I have made here are true and accurate to the best of my knowledge.

Date: _____

Signature: _____

SAR 391-6: "L109" explanatory pages

10/01/92 D-COL-003

* * *[(L109) Debt Level Information Screen keyed sample]

FIELD CONTENT-L109-DEBT LEVEL INFORMATION

(M) indicates a mandatory field, (O) indicates an optional field, (D) indicates a display only field.

s	Field Name	Definition
1	REGION CODE (D)	Two-character region ID. * * * 09 – San Francisco
2	DEBT LOC CODE (D)	Five=character location code of the debt. Display only. The first two characters must be alphabetic: AG = Collection Agency ED = Department of Education
3	ACCT NO (M)	The 10-character account ID. "S" or "E" followed by nine numbers. S = Social Security Number E = Employer Identification Number
6	DEBT NUMBER (D)	The 16-character debt ID; one letter followed by 15 numbers. G - GSL F - FISL N - NDSL Digits 2 - 5: Fiscal Year Digits 6 - 7: Region code = where the debt was originally input into the system. 00 - HQ 04 - Atlanta 05 - Chicago 09 - San Francisco Digits 8 - 14: Debt Number (Old Claim Number) Digits 15 - 16: Debt Sequence Number (Old Sequence* * *

11	ORIGINATING LENDER (D) OR ORIGINATING SCHOOL [NSDL debt]	The code and name of the originating lender for a GSL or FISL debt. Display only. * * *[NSDL debt description] * * *
13	CLAIMING LENDER AND ADDRESS (D)	Name and address of the originator of the debt. For NDSL loans, the screen displays the field as CLAIMING SCHOOL. For GSL loans, the screen displays the field as CLAIMING AGENCY. Display only.
14	DATE DEBT ESTABLISHED (D)	The date that the debt was turned over to ED and from which the statute of limitations is calculated. For GSL = ORIG-SOL-DATE, for NDSL = CERT-DATE, and for FISL = CLAIM-PAY-DATE. Display only. * * *
24	FIRST REPORTED (D)	The date on which the debt was first reported to a credit bureau. Display only.
25	LAST REPORTED (D)	The date on which the debt was last reported to a credit bureau. Display only.
26	FEDERAL DEFAULTER FLAG (D)	A flag indicating whether the account is a Federal Defaulter Case. Display only.
27	DOJ FLAG (D)	A flag indicating whether the account is a DOJ case. Display only.
28	IRS FLAG (D)	A flag indicating the account's IRS status. Display only.

SAR 415: "I100" explanatory pages

FEDERAL OFFSET ACCOUNT INF SCREEN (I100)

1) FMS IND: _ (D) Display Only Field

This one-character field is an indicator for TREASURY' purposes only. The new TOP formats contain a field to indicate whether an account was previously certified by ED in the 2000 Process Years forward, and this indicator is used strictly by TOP programs for tracking purposes only. For the 2000 Process Years forward, TOP programs will systematically populate ED accounts with either a blank, an "A" (for Add), or a "Y" (for Replace). For the 2001 Process Years forward, TOP programs will populate GA accounts with an "A" or a "Y". For all prior years, this field will be blank. This indicator does not relate to whether an account is currently certified in the TOP.

2) A/I: _ (D) Display Only Field

This one-character field indicates the current status of a certified account. Beginning with the 2001 Process Year, this field will contain an "A" (for Active or Certified Account) or an "I" (for Inactive or Decertified Account). * * * For all years prior to 2001, this field will be blank. This indicator will systematically change, abased on ACTION (see 7 below) updates.

3) Account Number: (M) Mandatory Field

Enter borrower's SSN * * *

4) Subagency: (D) Display Only Field

The agency (ED or GA) that has certified the account for offset. If the Subagency Code is 40, 50, or 90, the debt is held and serviced by ED. * * *

5) Process Year: (M) Mandatory Field

The processing year in which the Federal funds may be/were taken. * * * Currently, offset/reversal information is available from 1991 processing year forward.

6) Phone: (D) Display Only Field * * *

7) Action (M) Mandatory Field

(A To Activate Account)

(I To Inactivate Account) (D To Remove A Debt)

The actions in this field have been changed to accomodate the new TOP formats. Some of you only have the ability to view an account. This is where (providing you have clearance) you would enter an "A", "I", or "D". In all cases, staff should only take the appropriate actions on an account that is currently certified; i.e., the account indicates an "A" or "I" in the A/I field described in (2) above for the current Process Year. If a user attempts an action on (i.e., to Activate or Inactivate an Account or Remove a Debt) an an account that is not currently certified (i.e., the account indicates a blank in the A/I field) or attempts an action on an account for a previous Process Year instead of the current Process Year, an error message will appear indicating "Account Not Certified; No Action Allowed". * * *

8) Subagency Selections: (O) Optional Field

If more than one agency has certified an account in a given processing year, all of the Subagency Codes will appear hear * * *

9) Name: (D) Display Only Field

The borrower's name.

10) Debt Number: (D) Display Only Field

The new TOP formats require a Debt Number, which will be indicated in this field, for reporting purposes to TREASURY. For ED accounts, this number is systematically derived using 05, plus the SSN of the account. * * * NOTE: This Debt Number is used for TREASURY reporting purposes only. It does not relate to the ED Debt Numbers that are assigned to every debt that enters ED's database.

11) Certification Indicator: (D) Display Only Field

This field contains data for ED accounts beginning with processing year 1999 and forward. For ED accounts, it relates to whenever a TOP 65-day notice was sent. Valid values are:

R – Recertified. ED account was selected for recertification and was certified in the previous year(s). New TOP 65-day notice was not sent.

C – Certified. ED account was selected for certification and a (new) TOP 65-day ntoice was sent.

Blank – Processing year prior to 1999 or ED account that was not selected for certification. * * *

12) TOP Original Balance: (D) Display Only Field

If certified, ED or GA amount actually submitted to Treasury on Certification/Recertification tape. Represents principal and interest of certified debts. Remains constant regardless of actions. If not certified, represents amount submitted in pre-certification process. For GA accounts * * *

13) TOP Current Balance: (D) Display Only Field

Represents current principal and interest balance available for offset. This amount is reduced for offsets, payments and other adjustments, and increased due to interest accural and reversals performed for the 2000 processing year forward for ED accounts and 1999 processing year forward for GA accounts.

14) LAST DECREASE DATE: (D) Display Only Field

Date when last decrease amount was reported to Treasury.

15) LAST DECREASE AMOUNT: (D) Display Only Field

Cumulative decrease amount(s) reported to Treasury by ED or a GA for payments and other adjustments to reduce the certified amount. This amount(s) is subtracted from the TOP CURRENT BALANCE.

16) LAST INCREASE DATE: (D) Display Only Field

Date when last increase amount was reported to Treasury.

17) INCREASE AMOUNT: (D) Display Only Field

Cumulative increase amount(s) reported to Treasury by ED or a GA for interst accrual to increase the certified amount. This amount(s) is added to the TOP CURRENT BALANCE. As a result, it is possible that the TOP CURRENT BALANCE may be greater than the TOP ORIGINAL BALANCE.

18) REPLACEMENT DATE: (D) Display Only Field

Date when last replacement amount was reported to Treasury.

19) REPLACEMENT AMOUNT: (D) Display Only Field

Last replacement amount reported by ED or a GA to replace the certified amount. This amount is reflected in the TOP CURRENT BALANCE.

20) REFUND DATE: (D) Display Only Field

The most recent processing date of a refund reported by either ED or a GA.

21) ED/GA REFUND AMOUNT: (D) Display Only Field

Total amount (cumulative) of all refunds reported by either ED or a GA

22) REVERSAL DATE: (D) Display Only Field

The effective date of the last reversal (refund) performed by Treasury.

23) TOP REVERSAL AMOUNT: (D) Display Only Field

Total amount (cumulative) of all reversals (refunds) performed by Treasury. [Treasury does reversals for a number of reasons, i.e.: bankruptcy notification, death, an error in processing, injured spouse * * *

24) OFFSET DATE: (D) Display Only Field

The effective date of the last Treasury offset.

25) PROCESS DATE: (D) Display Only Field

Date Treasury offset tape was processed by ED.

26) TOP OFFSET AMOUNT: (D) Display Only Field

Total amount (cumulative) of all the Treasury offsets taken during the process year.

Below these fields, in the middle of the screen, additional data is displayed.

27) ACCOUNT STATUS: (D) Display Only Field

Describes the current status of the account in TOP. The meaning of the status is displayed and can vary (as shown below) depending on when the account is accessed.

* * * 6 = Federal funds have been offset. * * *

[NOTE: see also #7 above]

#107 Objections (to Supp.) 6/21/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court District of Colorado BB
2002 JUN 21 PM 1:44 James R. Manspeaker Clerk by s/D Dep. Clk

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF EDUCATION,
Defendant.

Defendant's Objection to Plaintiff's Supplementation of the Administrative Record

Defendant United States Department of Education, by and through United States Attorney John W. Suthers and the undersigned attorney, hereby files this Objection to Plaintiff s Supplementation of the Administrative Record.

1. Defendant submitted an administrative record for this case on May 15, 2002. The record was certified by Harold Jenkins, Assistant General Counsel for Post-secondary Education in the Office of the General Counsel. Mr. Jenkins certified that the record submitted on May 15, 2002, were copies of the documents compiled for use in reviewing Mr. Edwards' administrative challenge to the enforceability of his student loan debt.

2. On June 7, 2002, Plaintiff Bruce Edwards submitted a Supplemental Designation of the Record, comprising 472 pages, and which includes hundreds of pages that were created long after the Department of Education issued its final agency decision on August 31, 2000. *See* Index of Plaintiff Edwards' Supplemental Designation of the Record, Nos. 000127 000457.

3. Mr. Edwards seems to assume that because the Department of Education previously submitted documents as part of its initial disclosures in this litigation, those documents must necessarily be included in the administrative record. See Plaintiff s Brief Submitted with Supplementation, at 3. That is not so. The focal

point for judicial review of an APA appeal should be the administrative record *in existence,* not some new record made initially in the reviewing court. *Camp v. Pitts,* 411 U.S. 138, 142 (1973). "The complete administrative record consists of all documents and materials directly or indirectly considered by the agency." *Bar MK Ranches v. Yuetter,* 994 F.2d 735, 739 (10th Cir. 1993).

4. The record submitted by Defendant was the set of documents and data considered by the agency in issuing its agency decision on August 31, 2000. Plaintiffs challenge to the enforceability of his debt was addressed by Diane Spadoni, Regional Director of the Department ofEducation's Regional Service Center, who reviewed the promissory note Plaintiff had signed on June 17, 1985, as well as computer data compiled during the history of Plaintiff's loan. Those documents and data were all that Ms. Spadoni needed to see in order to issue an agency decision regarding the enforceability of Plaintiff's student loan debt. The notion that Ms. Spadoni or anyone else with the Department of Education would have pored over hundreds of pages of documents to determine the enforceability of a $2,500 student loan—when they had in front of them a copy of the promissory note with Mr. Edwards' signature—is absurd.

5. Accordingly, the administrative record which Defendant submitted on May 15, 2002, is the proper record under applicable case law, and Plaintiff should not be permitted to create an entirely new record by supplementing hundreds of pages of documents that were never considered by the agency.

Dated this 21st day of June, 2002.

Respectfully Submitted, JOHN W. SUTHERS
United States Attorney

s/*Peter Krumholz*
Peter Krumholz
Assistant United States Attorney
1225 Seventeenth St., Suite 700 Denver, CO 80202
(303) 454-0100

#108 Opening Brief 7/21/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Filed U.S. District Court District of Colorado BB
2002 JUL 31 PM 4:50 James R. Manspeaker Clerk by [illeg.] Dep. Clk

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff *pro se*
v.
UNITED STATES DEPARTMENT OF EDUCATION
Defendant

Plaintiff's Opening Brief
Oral argument waiver:
Plaintiff *pro se* does not request oral argument

Reasearch and production courtesy of
*Plaintiff's wife *** who is not an attorney.*

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Total Medical Management, Inc. v. United States, 104 F.3d 1314 (Fed. Cir. 1997), cert. denied, 118 S. Ct. 156 (1997) (citing Thermalon Indus., Ltd. v. United States, 34 Fed. Cl. 411, 414 (1995) (citing City of El Centro v. United States, 922 F.2d 816, 8[sic]

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United States v. Mena, 933 F.2d 19 (1st Cir. 1991) (by footnote) 10
United States v. Sutton, 970 F.2d 1001 (1st Cir. 1992) (by footnote) 10
Universal Camera Corp. v. N.L.R.B., 340 U.S. 474 (1951) 10, 13
Volkman v. United Transp. Union, 73 F.3d 1047 (10th Cir. 1996) (by footnote) 7

Statement of related cases. Except for the unresolved request for review timely filed with EDUC's Hearings Branch on 10/16/97 (upon 9/5/97 initial/sole provision of opportunity to contest the existence/enforceability of debt by objections to Treasury offset), EDUC made no provision for other prior or related formal appeals of this matter.

United States Code & Code of Federal Regulations
Unless otherwise indicated, all citations in this Plaintiff's Opening Brief refer to their source as effective at the time the Complaint in this matter was filed, January 8, 2001.

04 CFR 102 13
04 CFR 105 15
05 USC 552a 1, 2, 6, 13, 15
05 USC 552a 1
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05 USC 704 2
05 USC 706 2
05 USC Part 7 1
18 USC 1001 16
18 USC 1341 16
18 USC 241 18
20 USC1082 (by footnote) 9
20 USC 1071-1087-2 9
20 USC 1075 (1982) (by footnote) 12
20 USC 1082 1
20 USC 1083 (1982) (by footnote) 12
20 USC 1091 (by footnote) 12
28 USC 1343 1

28 USC 1346 1
32 CFR 682 15
34 CFR
30.20-30.28 (by footnote) 11
30.24 11
30.33 11
668 (by footnote) 12
682 (by footnote) 12
34 CFR 30 15
34 CFR 33 16
34 CFR 682 ..... 10, 12, 15
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34 CFR 682 (1984) (by footnote) 12
34 CFR 682 (by footnote) 12
34 CFR 682.208(e) 8
34 CFR 682.208(e) 8
34 CFR 682.401(b)(17) 8
34 CFR 682.508 8
34 CFR Part 30 11
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44 USC 3309 10
44 USC 3314 10
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Public Laws

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Attorney General's Manual on the Administrative Procedure Act 103 (1947) 3
CFR 12
Civil Rights Act 17
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Committee on Education and the Workforce, House of Representatives 5
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Education Financial Management—Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 3/28/02, GAO-02-406, US GAO (by footnote) 12
Education Financial Management—Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 4/10/02, GAO-02-513T, US GAO (by footnote) 12
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Poor Internal Control Exposes Department of Education to Improper Payments, 7/24/01, GAO-01-997T (by footnote) 5
FINANCIAL MANAGMENT—Education Faces Challenges in Achieving Financial Management Reform. 3/1/00, T-AIMD-00-106, US GAO (by footnote) 12
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United States Attorney Central District of California, Public Affairs Office.....6

District court jurisdiction appears under, but may not be limited to, 28 USC 1343(a); 28 USC 1346(a) & (b) and 5 USC 552a(g). My standing here is based on measurable injury in part: a $234.32 tax refund offset (Compl. Ex. A/Supplement to Administrative Record ("SAR") 127), which was a qualified "final" action on the part of the Department of Education ("EDUC") to my understanding of 5 USC Part 7; future confiscation, in an amount intended to grow, that was approximately one-third the total taxable income for my entire immediate family of four at the time of that initial offset; and greater, immeasurable injury, from violations of Constitutional rights (in addition to those against my tax refund property) extending to due process, equality under the law, privacy protections, and the expectation of honesty in government service.

As a citizen and member of the public, I share an interest EDUC's standing, but differ on how that is best served: I have no problem with the mission to vigorously collect loans that are used to pay actual student expenses and guaranteed by the Federal government. However, when a "loan" is fabricated from pre-loan documents (and, apparently, since January of 1986, that may be all it takes) that required more than that for consummation (and conveyed original rights and responsibilities for any "holder" of the pre-loan note), there is no public interest whatsoever in "enforcing collection" from an individual instead of from the entity or entities involved in presenting it in false claim to the government.

Sovereign immunity is waived on more than one level. EDUC "admits jurisdiction only for judicial rev'iew under the Administrative Procedure Act..." [Answer filed 3/19/01, p. 1]. The APA notes removal of the defense of sovereign immunity as a bar to judicial review where it describes that right, at 5 USC 702/Amendments; and provides relief where it identifies jurisdiction, at 5 USC 552a (g). EDUC identified agency waiver of sovereign immunity, under 20 USC 1082(a)(2), while acknowledging the limit to its prohibitions in the cryptic qualification, "except when the Secretary exercises powers that are clearly outside his statutory authority. See, e.g., Green, 2000 WL 33421459, at #3." [Mem. Brief in Support of Mot. for Sum. Jdgmt. or, in the Alt., Mot. to Dismiss Purs. to

Fed.R.Civ.P. 12(b)(1) dated/filed 10/1/01, p. 18] The foregoing seems to expressly address (and resolve) EDUC's first three affirmative defenses, as to access to relief, waiver of sovereign immunity, and authority of this court [Ans., p. 9].

Administrative prerequisite immunity, the fourth affirmative defense [Ans., p. 9], was impliedly waived on numerous occasions by the agency's refusal to engage in the most fundamental step of our dispute: review of the falsity of the EDUC claim, upon which liability for damages from related agency action logically arise. I sought verification of debt for years, and did not cease objecting after I timely filed the first and only time administrative review was offered in 1997—but I was *required* to "make a federal case" out of defending myself before receiving this adjudicatory look at the existence of alleged obligation on my part in light of the lack of lender performance under the terms of the written contract. Irrespective of application for declaratory order, any form of reconsideration, or appeal to superior agency authority, 5 USC 704 provides all actions raised in my Complaint-within 2 years from the date of the cause of action, or (according to 5 USC 552a(g)(5)) *from my discovery* of misrepresentation of APA required disclosures of informa-

tion material to the establishment of EDUC liability—arising from final agency action are reviewable within the scope of 5 USC 706.

> [U.S. Supreme]Court's precedents have recognized at least three broad sets of circumstances in which the interest of the individual weigh heavily against requiring administrative exhaustion. McCarthy v. Madigan, 503 u.S. 140, 146 (1992).

They appear to be (and to apply here): 1) undue prejudice from, e.g., unreasonable or indefinite timeframe for administrative action, 2) inadequacy of administrative remedy where, e.g., challenge is to the adequacy of agency procedure itself, and 3) if the agency is shown to be biased or has otherwise predetermined the issue before it. *Id., in general*

> While federal courts may be free to apply, where appropriate, other prudential doctrines of judicial administration to limit the scope and timing of judicial review, [the APA] 10(c), by its very terms, has limited the availability of the doctrine of exhaustion of administrative remedies to that which the [prescribed] statute or [agency] rule clearly mandates.
>
> The last sentence of 10(c) refers explicitly to "any form of reconsideration" and "an appeal to superior agency authority." Congress clearly was concerned with making the exhaustion requirement unambiguous, so that aggrieved parties would

> know precisely what administrative steps were required before judicial review would

> be available. If courts were able to impose additional exhaustion requirements beyond those provided by Congress or the agency, the last sentence of 10(c) would make no sense...would transform 10(c) from a provision designed to " 'remove obstacles to judicial review of agency action,' " Bowen v. Massachusetts, 487 U.S. at 904, quoting Shaughnessy v. Pedreiro, 349 U.S. 48, 51 (1955), into a trap for the unwary .
>
> ...Attorney General Clark reiterated the Department of Justice's view that 10(c) "embodies the doctrine of exhaustion of administrative remedies... .Agency action which is finally operative and decisive is reviewable." Attorney General's Manual on the [APA] 103 (1947). *Darby v. Cisneros,* 509 U.S. 137, 146-47, 149 n. 10 (1993).

One could not guess from EDUC's 8/31/00 letter [AR 1-2] that *further administrative approach* might be more effective than the *required request for review* filed 10/16/97 to establish that the EDUC claim *was not a debt / legally enforceable against me, and that certification for offset would be false:* requiring such now would seem to be hairsplitting:

> Federal courts have held the "exhaustion of administrative remedies is not required when 'the question of the adequacy of the administrative remedy...[is] for all practical purposes identical with the merits of [the plaintiff's] lawsuit.' " Barry v. Biachi, 443 U.S. 55, 65 n. 10 (1979); Gete v. Immigration and Naturalization Serv., 121 F.3d 1285, 1291 (9th Cir. 1997); accord, *Finnerty v. Cowen,* 508 F.2d 979,983 (2nd Cir. 1974) (collecting cases).

The lack of independent agency review of the EDUC claim details made it obvious that claims to EDUC based on its falsity would have been futile, see Aleknagik Natives Ltd. v. Andrus, 648 F.2d 496,500 (9th Cir. 1981) (no administrative exhaustion required where it would be "meaningless as a practical matter.").

Whereas EDUC's final action followed one, incomplete, administrative "opportunity" made available in 7 years, violation of my rights inherent in that offset was deliberate.

> Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. Bell v. Hood, 327 U.S. 678, 684 (1946).

EDUC acted and acts for the United States; if EDUC waived tort prerequisites before this suit (or did not identify/shielded from liability an indispensable co-defendant), where the United States' liability equates to a private individual's (i.e., for contract- or statutory-rights-violations), it seems clear this court may grant all forms of relief-including, if necessary, removal of only the appropriate claims from my Complaint to their proper venue without prejudice within the six-year limitation for suits against the government.

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Issues Presented for Review *only appear to be resolved* by EDUC's fifth affirmative defense, that attempts to dispose of the burden of proving a viable contract, "Plaintiff's signature of the promissory note ["Note" herein] for the loan at issue is cause for estoppel to deny liability thereunder for the loan amount and accrued interest, fees and charges." Ans. p. 9 [emphases added]. This *sleight-of-hand* (in writing), diverts attention from the contested *lender action required in the Note,* to the self-serving *illusion/conclusion* that loan was made—by a

different lender, without a single lender-generated document. This seed of our respective claims [EDUC's self-generated on 5/25/93, mine involuntarily arising on 9/22/00] is not the only issue: the Complaint and Argument below present for review the alleged loan *transaction/contract;* and, independently, EDUC exchanges, decisions and actions directed at me, based solely on *possession* (as "Holder," not in due course), of a Note subject to my unanswered, valid defense of the obligation through numerous requests for verification and objections to existence/enforceability of debt.

Nature, Course and Disposition of Case cover EDUC failure to meet the burden of proof in alleging a *contract* with me; on a tiny scale, it shows accounting, auditing, and records-destruction practices that turn *corporate* reputations (i.e., Arthur Andersen's) into euphemisms for fraud: the EDUC claim is not "close enough for government work."

The pre-suit course of the EDUC claim was conducted according to every opportunity, received over a course of years, to *challenge the existence oj the alleged 1985 debt.* I asked for verification whenever offered, and timely filed for agency review in 1997, by sworn request/selection of choices *EDUC presented as valid objections to offset to secure review.* EDUC's Hearings Branch terminated review without notice when I declined to convert my request to sworn *acknowledgment of debt* by submitting post-1/86 "loan discharge" applications from a follow-up letter seeking further "applicant" information.

Occasionally volunteering more detailed objections in response to collection contractor demands (to supplement requests for each "verification of debt" offered), I declined to treat the "loan" as a *fait-accompli*—i.e., alleging the school owed a <u>refund</u> ifit "received"

the check, as suggested in a 11/12/98 reply (full of generalities and misinterpretations) to a letter of mine from a <u>*Debt Collection* Service</u> employee [Compl. Ex. J, aka SAR 80-1]. Without the <u>Hearings Branch</u> completing

the 1997-requested review—even though I raised it in later letters—offset was effected 9/22/00, shortly after another, dismissive *Debt Collection Service* reply to another voluntary objection letter I sent: the prerequisite certification for offset (still not disclosed by EDUC) *could* not be valid. I filed this suit.

Facts/Record Relevant to Issues on Review, despite EDUC's myopic focus on a limited portion of its own in-house materials plus the *Note* at issue (there is no "loan at issue," but a claim of Federal guarantee that is a peripheral matter here); the *whole* agency record (not timely filed when EDUC recognized APA review jurisdiction [Ans., p. 1]) and relevant facts and evidence include EDUC statements by certification or waiver in prior processes (i.e., disclosure, discovery and exhibit exchanges in this suit—ostensibly valid/unobjectionable for trial de novo) and public records/knowledge of issues related to my Complaint, not limited, as EDUC would have, to issues it might choose for suit.

Committee on Education and the Workforce, House of Representatives GAO testimony before Subcommittees includes (Oversight and Investigations) "vulnerabilities in [EDUC] student financial assistance programs have led [GAO] since 1990 to designate this a highrisk area for waste, fraud, abuse, and mismanagement;"[1] and, (Select Ed.), on Internal Control Weaknesses Leave Department of Education Vulnerable to Improper Payments[2]:

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[1] FINANCIAL MANAGEMENT: Financial Management Weaknesses at the Department of Education, Statement of Gloria Jarmon, Director, Health, Education & Human Services, Accounting and Financial Management Issues, Accounting and Information Management Division, GAO/T-AIMD-00-50, p. 2, 12/6/99 (footnote omitted)

[2] "Improper payments include errors, such as duplicate payments and calculation errors; payments for *unsupported or inadequately supported claims;* payments for *services not rendered or to ineligible beneficiaries;* and payments resulting from fraud and abuse." (*emphasis added*) FINANCIAL MANAGEMENT: Internal Control Weaknesses Leave Department of Education Vulnerable to Improper Payments, Statement of Jeffrey C. Steinhoff, Managing Director, Financial Management and Assurance, GAO-01-585T, p. 2, 4/3/01

> Consequently, continued weaknesses in information systems controls increases the risk of unauthorized access or disruption in services and make Education's sensitive grant and loan data vulnerable to inadvertent or deliberate misuse, fraudulent use, improper disclosure, or destruction, which could occur without being detected.[3]

As revealed in Argument/evidence below, *EDUC* made pertinent findings, proximate to honoring the federal guarantee for the EDUC claim, about claimants Bank of America (BoA) and California Student Aid Commission (CSAC), but had failed to obtain the only other complete CSAC record extant besides the "endorsed" Note [produced/signed for First Independent Trust *at the school* #7926, Travel and Trade Career Institute (TTCI)].

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A *relevant* fact about TTCI, known *before* offset action against me, which EDUC did not deem suitable for inclusion in 4/26/01 initial disclosure, subsequent responses to discovery requests, or (improper) 10/1/01 motion for summary judgment/dismissal, *but considered reportable* on 5/24/00, to the House Task Force on Education was that:

> On February 28, 2000, the Director of the Orange, California, branch campus of Travel and Trade Career Institute was sentenced to five months in jail, five months confinement in a community halfway house, $83,000 restitution, $50 special assessment, and three years supervised release...[4]

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[3] *Ibid.*, pp. 10-11. See also, in general, FINANCIAL MANAGEMENT: Poor Internal Control Exposes Department of Education to Improper Pavments, Statement of Linda Calbom, Director, Financial Management and Assurance, GAO-01-997T,7/24/01.

[4] Statement of Lorraine Lewis, Inspector General, U.S. Department of Education, Before the Task Force on Education, Committee on the

...which statement followed (but attributed the use made of said misappropriations in the reverse of) information disseminated in the November 23, 1999, United States Attorney Central District of California, Public Affairs Officer's press release:

> Appearing before United States District Judge David O. Carter, Braxton admitted that he was under contract to manage the financially troubled Travel and Trade Career Institute in Garden Grove when he applied for and received approximately $100,000 in Pell Grant funds. ...Braxton used the majority of the funds for the school's operational expenses and a small amount for his personal use. The United States Department of Education's Inspector General later learned that the trade school enrolled few students, and that Braxton had falsified reports concerning the use of the money. [¶] Braxton is scheduled to be sentenced by Judge Carter on February 28.[5]

Argument below includes other facts, and account information EDUC withheld until *after* I filed suit, so not excluded, if material to establishing liability (5 USC 552a (g)(5)).

Summary of Argument must include that the EDUC claim is for a "contract" for which my obligation ended when First Independent Trust did not advance me a loan check that I no longer needed to pursue; EDUC's status ("Holder") cannot be traced to an advance to me by that lender, nor withstand assertion of the rights (*i.e.,* burden

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Budget, U.S. House of Representatives, *On Financial Management at the Department of Education,* May 24, 2000, p. 4.

[5] United States Attorney, Central District of California, Thom Mrozek, Public Affairs Officer (213) 894-6947, *thom.mrozek@usdoj.gov,* Release No. 99-241, Former Consultant to Orange County School Pleads Guilty to Misappropriating Financial Aid, November 23, 1999.

of proof) under which any transfer of the Note expressly remains. EDUC had no reason not to know the CSAC 10/30/92 "endorsement" on the Note was unsupported by the alleged originating lender (#801178, "BoA") claim of Bank of America, and was disqualified by CSAC-recorded non-compliance with due diligence prerequisites—*before* EDUC stole our tax refund.

To cover payment of CSAC's "guarantee," EDUC participated in presenting numerous false claims related to a federal financial aid program; employed the United States Postal Service in a pattern involving a succession of collection contractors and demands, while ignoring the lack of loan records, to defraud an individual of money; and made a false

certification for "involuntary payment" when submitting the account to an Agency of the Government (US Treasury-FMS) for "collection;" having thus violated my Constitutional and civil rights to equal application of law to contracts, privacy/security in property, liberty from threats to earnings/reputation tied to employment/credit opportunities, and expectation of honesty in government service.

Why did EDUC ignore: statutes regulating collections *be for valid debts;* that program participants qualify for payment under *all* applicable regulations; standards of thorough, accurate documentation/records maintenance until claim resolution; dictum to provide opportunities for contesting allegations and evidence, and to record adjudicatory matters *for* appeal/review; limits on authority to hire contractors, including retention of dispute resolution; and requirement of due process, to suffocate a valid defense and dominate under color of authority? More *sleight-of-hand* (please see footnoted notations):

> Those documents and data[6] were all that Ms. Spadoni needed to see in order to issue an agency decision[7] regarding the enforceability of Plaintiff's student loan debt.[8] The notion[9] that Ms. Spadoni or anyone else with the Department of Education would have pored over hundreds of pages of documents[10] to determine the enforceability[11] of a $2,500 student loan[12] –when they had in front of them a copy of the promissory note with Mr. Edwards' signature[13] –is absurd.[14] *Defendant's Objection to Plaintiff's Supplementation of [Admin. Record]* filed 6/21/02, pp. 2-3.

...versus a balance *"as of August 29, 2000"* [AR 22]: **$6,646.03** that includes 25% "Projected/Actual CoII. Agency Fees," *when the account was not in referral.*[15]

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[6] *Internal agency "records"* & Note only filed 5/15/02, a capricious 22-page designation as "Administrative Record"

[7] *Dated* 8/31/00; *Cf.* review request *filed* 10/16/97 (see AR 14).

[8] Failing to determine the also-challenged existence of the alleged debt, for which no loan/lender records exist.

[9] A word calculated to imply no reasonable expectation of thorough, independent ,statutory agency investigation.

[10] That were submitted as the "whole" record/facts about *years'* of agency mis-, mal-, non-feasance—*"poring" over the dearth of lender/loan evidence for the EDUC claim would not discommode the least-motivated employee!*

[11] Only to be found after an adjudicatory-type conclusion, without foundation, against challenge to *existence...*

[12] The EDUC claim is *not* based on a *student loan* , but on a CSAC alleged loan/default claim of Bank of America.

[13] The Note, by its Estimated Date of Disbursement [see, e.g., SAR 469], proves itself not to qualify as evidence of its proposed loan transaction when the producing/loan originating school, TTCI, required the signature thereon.

[14] No less so than EDUC spending 9 years' collection, with 1.5 years' litigation, on a claim without any loan papers.

[15] According to SAR 182, "R111 Referral History Screen" (Collection Agency History); *cf* AR 22

Thus, all program regulars profit, and EDUC's "return" *exceeds the "loan"* at least $4,146.03.

ARGUMENT: De Novo Review of the EDUC claim "Contract" Interpretation

> Contract interpretation is "undeniably an issue for judicial determination." *AT&T Technologies, Inc. v. Communications Workers,* 475 U.S. 643,648-49 (1986); (The interpretation and meaning of contract provisions is a question of law that we review de novo.) *Mendler v. Winterland Prod. Ltd.,* 207 F.3d 1119, 1121 (9th Cir. 2000).[16]

Conflict as to exchanges aside (Records Maintenance is argued below), EDUC recorded disputes of "debt" *based on my not receiving a loan in 1985,* before and after copying me the Note, *e.g.,* AR 13-19. However, EDUC's *sole pre-suit retort* [AR 16; *but see* Compl. Ex. J/SAR 80-81] *implied, but did not show,* TTCI received the loan, on the basis that *funds borrowed by a student are disbursed to the institution by check or other means.*

That basis reflects changes in code by Pub. L. 99-272 , 4/7/86 100 Stat 340 § 16012, retroactive to 1/1/86 §16041(b), that were not in effect if TTCI "received" the

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[16] *See also Volkman v. United Transp. Union,* 73 F.3d 1047, 1050 (10th Cir. 1996); *Golden v. Kelsey-Hayes Co.,* 73 F.3d 648, 653 (6th Cir. 1995); *Linton v. United Parcel Serv.,* 15 F.3d 1365, 1370 (6th Cir. 1994); *American Totalisator Co., Inc. v. Fair Grounds Corp.,* 3 F.3d 810, 813 (5th Cir. 1993); *Boyer v. Douglas Components Corp.,* 986 F.2d 999, 1003 (6th Cir. 1993); *First American Nat'l Bank v. Fidelity & Deposit Co.,* 5 F.3d 928, 984 (6th Cir. 1993) (citing *Policy v. Powell Pressed Steel Co.,* 770 F.2d 609,612 (6th Cir. 1985), cert. denied, 475 U.S. 1017, 106 S. Ct. 1202 (1986)); *Simeone v. First Bank Nat'l Ass'n,* 971 F.2d 103, 106 (8th Cir. 1992); *International Union of Operating Eng'rs Local 571 v. Hawkins Constr. Co.,* 929 F.2d 1346,1348 (8th Cir. 1991); *Sheet Metal Workers, Local 19 v. 2300 Group, Inc.,* 949 F.2d 1274, 1278-79 (3rd Cir. 1991); *LTV Educ. Systems, Inc. v. Belt,* 862 F.2d 1168, 1772 (5th Cir. 1989).

disbursal described in the Note. *Disbursement requirements* "requir[ed] the personal endorsement of the borrower. ..[n]either a lender nor a school [could] obtain a borrowers' power of attorney or other authorization to endorse a check. .." [(1984) 34 CFR 682.401 (b)(6)]. The Note[17] [e.g., SAR 469-72] does not chose the school notification <u>*alternate*</u> (to lender *or* guarantor *informing* TTCI of *insurance* in 30 days) "by the lender sending allloan checks to the school for delivery to the borrower," [(1984) 34 CFR 682.401(b)(7)(ii)]; it is not implied because TTCI's address does not appear.

EDUC has ignored the terms of the Note and criteria for a valid express contract:

> "a mutual intent to contract, including offer, acceptance, and consideration; and authority on the part of the government representative who entered or ratified the agreement to bind the United States in contract." Total Medical Management, Inc. v. United States, 104 F.3d 1314, 1319 (Fed. Cir. 1997).[18]

In reference to the Note X [see AR 5: /SAR 472], as a new "Holder" *not in due course* in 1993, EDUC was not empowered to "ratif[y] the agreement to bind the United States [and me] in contract" without being able to show; as the lender would have to, that the precedent disbursement *described* had incurred my contingent obligation. Instead, there is no lender document/record of disbursal

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[17] Legib1y disclosed to this Court by EDUC as AR 3-4; first disclosed to me with a legible second page on 6/6/01 [see SAR 197-98]; produced in 2nd-page-illegible form *prior to this suit* [see Compl. Ex. D referenced in SAR 32-33; *see also* (pre-suit) SAR 42-43 & 72-73 *and* (post-suit) SAR 433-34]; <u>enlarged for readability</u> @ SAR 469- 72.

[18] *Cert. denied,* 118 S. Ct. 156 (1997) (citing *Thermalon Indus., Ltd. v. United States,* 34 Fed. Cl. 411, 414 (1995) (citing *City of El Centro v. United States,* 922 F.2d 816, 820 (Fed. Cir. 1990), cert. denied, 501 U.S. 1230 (1991); *Fincke v. United States,* 230 Ct. Cl. 233, 244, 675 F.2d 289, 295 (1982).

(or *any* contact with me), and no evidence of transfer, under Guaranteed Student Loan Program conditions (34 CFR 682.401(b)(17), 34 CFR 682.208(e) [*see* Compl. p. 5], *or* 34 CFR 682.508, whichever applies) of the one or more transactions (ostensibly including Bank of America c/o CMSC #801178 [AR 5]) required to sustain CSAC's 10/30/92 "endorsement" to EDUC [*i.e.*, AR 4].

Consideration—Provisions and Performance

> "In contract interpretation, the plain and unambiguous meaning of a written agreement controls." *Craft Mach. Works, Inc. v. United States,* 926 F.2d 1110, 1113 (Fed. Cir. 1991); *see also Gould, Inc. v. United States,* 935 F.2d 1271, 1274 (Fed. Cir. 1991) (The contract must be considered as a whole and interpreted to effectuate its spirit and purpose, giving reasonable meaning to all parts.)

Specific language in the subject Promissory Note and Disclosure Statement indicating the consideration included my personal receipt of the advance is found in provisions:

> **I** "I promise to pay... the 'Loan Amount'... to the extent it is advanced to me. .." **II-2)** "If I have not already enrolled..." **VII-8)** "In this Note the words I, me and my, mean each and all of those who signed it. .." and **XII** "I will use all of the proceeds that I receive from this loan.. .including room and board.. .and transportation and commuting costs." [Note, *e.g.,* AR3-4 *or* SAR 469-72]

That last provision (XII) also set the "terms of this Promissory Note will be interpreted according to the law (20 U.S.C. 1071 to 1087-2) and Federal Regulations (2:[sic] Part 682) that govern the GSLP." *Id* No provision

[of the Note could be changed or? *(hard to read)*] modified except in writing. *Id.*, VII-4. Effective code, partially quoted and cited on page 8 above, required student loan disbursements be by check, payable to and requiring the endorsement of the borrower [(1984) 34 CFR 682.401 (b)(6)[19]].

> To constitute consideration, a performance or a return promise must be bargained for ...promise or apparent promise is not consideration if by its terms the promisor or purported promisor reserves a choice of alternative performances...
> Restatement (Second) of Contracts § 71(1) & 77, respectively (1979).

There is no indication I understood or agreed my signature on that Note would obligate me if I did not receive a loan check or if "disbursal" was received by TTCI instead of me.

There is nothing in EDUC's "Administrative Record" to indicate resolution of contract interpretation dispute, or to substantiate reliance on the 20 pages of in-house computer printouts, submitted for judicial review, for the "final decision." *Cf.*, "...true copies of the Department's Administrative Record compiled for use..." (5/9/02 Cert. of Admin. R., filed 5/15/02), *and* "...the set of documents and data considered by the agency in issuing its agency decision on August 31, 2000" (Def.'s Obj. to Pl. Supp. of the Admin. R. filed 6/21/02), with EDUC's own record entry regarding that 8/31/00 letter,[20] in AR 20-21:

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[19] Interpretive law [*see* XII of the Note, *e.g.*, AR 4 or SAR 472], restricts audits of financial transactions: "...in no case shall the Comptroller General or the Inspector General apply subsequently determined standards, procedures or regulations to the records of such [EDUC program participant] agency, lender..." [20 USC 1082(f)(4)]

[20] Although that letter indicated by **1992**, P.L.'s 102-26 and 102-325 "eliminated the statute of limitations for student loan collections," EDUC's regulations contradicted this [34 CPR 30.20(b)(4)] as of July 1, **2000**

Date 08/29/00 Source Code PIC596
Narrative MI-BORR STATES IN RATHER UNCLEAR TERMS THAT THE DEBT IS TOO OLD TO BE ENFORCED AND THAT HE IS DISPUTING CERTIF. FOR TOP; RESP: GV AUTHORITY FOR ELIMINATION OF STATUTE OF LIMITATIONS, GV AUTHORITY FOR TOP AND ADV BORR RECV'D N18 (BORR HAD INCLUD A COPY OF THE N18 WITH HIS LTR), REFER TO PIC PHONES. LBROOKS

Nothing outside my own letter was produced; there was no *investigation* or *adjudication*:

> In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may...take...adverse action against such individual, as a result of information produced by such matching programs, until--(A)(i) the agency has independently verified the information... [which] requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action... [5 USC 552a(p)(1) & (2)]

> The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competentjurisdiction with respect to that loan...34 CFR 682.402 [emphases added]

Unresolved contract interpretation *prohibited* offset, so evidence should not be excluded by the miscreant agency (especially admissions or withheld information).

Evidence of subsequent events frequently sheds light upon, and thus assumes relevance in relation to, antecedent acts. *See United States v. Lara,* 181 F.3d 183, 204 (1st Cir. 1993).[21]

Statutes, evidence and facts of record for the EDUC "contract" claim.

"Records" include all papers/documentary materials made/received by a federal agency under federal law or in connection with the transaction of public business, preserved *or appropriate for preservation* by that agency as evidence of decisions, operations or other activities... [*see* 44 USC 3301]. Absent US Comptroller General written approval, there is a binding [44 USC 3314] prohibition on disposal of [per 44 USC 3309]:

> [r]ecords pertaining to claims and demands by...the Government of the United States or to accounts in which the [US Gov't] is concerned, either as debtor or creditor... until the claims, demands and accounts have been settled and adjusted in the [GAO].

Federal Rules of Evidence rules (FRE) provide for consideration of: the remainder of or related writings/recorded statements in fairness to be considered contemporaneously with EDUC's choice of in-house records to imply a legitimate "loan history" [FRE 106]; hearsay exceptions on absences in records of regularly conducted business, and public records/reports, to prove a matter's nonoccurrence or nonexistence, [FRE 803(7) & (10), respectively], and party-opponent admissions, [FRE 801(d)(2)]. Despite EDUC's pre-suit withholding and/or ignoring such information/factors: The reviewing court must consider

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[21] *See also, U.S. v. Sutton,* 970 F.2d 1001, 1007 (1st Cir. 1992); *U.S. v. Mena,* 933 F.2d 19,25 n. 5 (1st Cir. 1991)

> "the record in its entirety..., including the body of evidence opposed to the [agency's] view." *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 487-88 (1951); *and see, AllentownMack Sales & Serv., Inc. v. N.R.L.B.*, 118 S. Ct. 818,829 (1998)[22]

Interpretive code in Note ¶XII [AR 4/SAR 472] requires a guaranty agency to retain complete and accurate records [34 CFR 682.414(a)(1)(ii)] including (but not limited to) those that document the right to EDUC payments, and *all* documents filed to support a claim by a lender (also retains records, id. § 682.414(a)(4)(ii)). Guarantor reten-tion is minimum 5 years *after a loan is paid in full,* and may be longer [34 CPR 682 .414(a)(2)].

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However, the Note is certifiably[23] the *sole* item obtained by EDUC prior to this suit, despite receipt of numerous requests for verification of debt and protests of the claim (but see records maintenance section/issues infra), and of my 10/16/97 filing for review (within 5 years of EDUC's 5/25/93 acceptance); but it does not demonstrate lender performance. My rights under 42 USC 1981 (a)-(b) were trespassed by EDUC's offset of my 1999 tax refund against a 1985 Note (for which my obligation was never engaged) that ignored its provisions, statutory context, and related records.

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[22] "...purports to be engaged in simple factfinding,...[the agency] is not free to prescribe what inferences from the evidence it will accept and reject, but must draw all those inferences that the evidence fairly demands."

[23] In reference to: a) Defendant's Responses to Plaintiff's Interrogatories * * *; b) * * * Defendant's Answer to Plaintiff's Requests for Admissions * * *; and c) Defendant's Responses to Plaintiff's Interrogatories and Requests for Production of Documents * * * *See*, at request /response topic # shown: #8 at SAR 203-4 & 220, #1 at SAR 247 & 338, #2 at SAR 247, #3 at SAR 234, 247-48 & 339, #6 at SAR 248, ***and most particularly on-point:*** #7 & 8 at SAR 248 & 340-41, *also* #47 at SAR 264, #50 at SAR 265, #1, 3 & 4, at SAR 267, #12 at SAR 269-70.

De Novo Review of Agency Adjudicatory Action/Inadequate Factfinding Procedures

> De novo review of whether the [agency's] decision was "unwarranted by the facts" is authorized by 706 (2) (F)...when the action is adjudicatory in nature and...agency factfinding procedures are inadequate. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415 (1971). *Also, [SEC] v. Chenery Corp.*, 318 U.S. 80,94 (1943);[24] *[ATF]* v. *[FLRA]*, 464 U.S. 89, 97 n. 7 (1983); *Dubois v. [US]Agric.*, 102 F.3d 1273, 1284 (1st Cir. 1996); *Howard v. F.A.A.*, 17 F.3d 1213, 1215 (9th Cir. 1994)

EDUC's revised[25] "(LI02) Collector Note Pad" shows its Hearings Branch received my filing on 10/16/97 for "TOP HEARING/REVIEW;" requested only "COPY OF PN [Note];" in reply to challenges on enforceability and existence of debt, sent only "ATB [ability to benefit] & UNAUTHOIZED[sic] SIGNATURE APPL AND COPY OF PN;" eventually recorded a letter from me formally declining to become/qualifying as an "applicant" for "loan discharge," but" STILL STATES HE DOES NOT OWE THE DEBT;" **and never contacted me again**. [AR 14].

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[24] "But if the action is based upon a determination of law as to which the reviewing authority of the courts does come into play, an order may not stand if the agency has misconceived the law."

[25] *Cf* 6-page productions as *trial exhibits (SAR 432-52)* at SAR 444-49 "(L102) Collector Note Pad" and as Mem Br. in Support of Mot. for Summ. Judgment or, in the Alt., Motion to Dismiss Purs. to Fed. R. Civ. P. 12(b)(1) Ex. E filed 10/1/01*** *and* garbled 11-page *initial disclosures (SAR 147-88)* at SAR 154-64 "(L102) Collector Note Pad" ***

EDUC's record shows the Hearings Branch did not comply with 34 CPR Part 30 in general [i.e., 34 CPR 30.33(a)][26] or with §34 CPR 30.24(e)[27] in particular. Due process was violated not only by lack of any investigation (admitted by EDUC during these proceedings[28]), but also by *subjugation* of statutory opportunity for review *to agency contingency of prior sworn acknowledgment of debt:* that CSAC could produce only one "record" to support the Note for the EDUC claim was not reviewed *because* I declined to apply for post-1/86-loan "discharge" consideration[29] to moot review of existence.

EDUC did not obtain that record, a "Contact History Report dated 12/31/92,"[30] before suit was filed, albeit objection to lack of prior contact had been noted [AR 15]; then it was deemed citable (Ans., p. 3 #14-b), but unreadable (*see* SAR 209-10, Int/Resp #23-24).

CSAC's "Contact History Report dated 12/31/92" [SAR 153] is self-explanatory to this extent: A) the "loan history" for the EDUC claim consists of one *CSAC-generated* sheet that does not record a single reply (actual

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[26] Referral for offset hinged on "if a named person owes a debt under a program...of [EDUC]" and "complying with...Secs. 30.20-30.28" as modified therein: The former was not established by, or reasonably concluded from, the actual "loan history." The latter did not provide for *not* notifying me of "a decision regarding the issues identified in the notice under.. .Sec. 30.33 (b)(3)(ii) [existence. amount. enforceability or past due status)" [34 CPR 30.24(e)(2)] for 9/5/97 N18 [offset notice, AR 8] for 10/16/97 filing [AR 14] before 9/22/00 offset [SAR 127].

[27] See Compl. Ex. G, p. 1 [SAR 62], on EDUC Request for Review form [SAR 60-61 (blank)] at Part II 10 & 12

[28] "...because there was no investigation" * * * Admission 20 [SAR 251] * * * this is confirmed by lack of pre-suit possession of school, lender or CSAC records, Answer to Admission 7 at SAR 248 * * *

[29] *See* 10/16/97-4/3/98 at AR 14; 10/30/97 sole written reply from Hearings Branch (Compl. Ex. G) at SAR 62-74; & Answer to Admission 20, AR 251 * * *

[30] *See Defendant U.S. Department of Education's Initial Disclosures* listing (SAR 147-51) at SAR 148, item B; and production of said item B, CSAC's Contact History Report dated 12/31/92, at SAR 153

contact), for listings *no earlier than* ***2/26/87***; B) lender #828374 of Note [AR 3] does not appear; C) the claim was disqualified [*see* 34 CRR 682.406(a)(5)] when no lender claim was filed by 9/86 (on "default" consistent with Note ¶II, V-I & V -2 [AR 3-4; *cf* DEEFTDTE in AR 5[31]]); D) the main heading apartment address matches a *relisting*, of a 9/28/87 entry, on 9/17/90—followed by 3 descriptions of "BAD ADDRESS" (12/27/90, 10/07/91 and 11/20/91); E) interest is missing [Note ¶III/AR3] (6/21/85-12/31/98: $2,500 @ 8% ≈ $1,595); and, F) CSAC failed due diligence [34 CPR 682.406(a)(11)] required 180 days from 4/16/87 [34 CPR 682.410(b)(6)(ii)].

Having had two community college classes in 1984 without one, I did not know a diploma[32] was required for the program until I received EDUC's 9/5/97 review notice. False certification[33] was not the sole area of TTCI's[34] program violations[35] if it took the "loan;"[36] nor its only

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[31] (R107) GSL Program Specific Screen *explanatory sheet* SAR 179 * * *. *Note:* AR 5 "ORGCLMPAYDTE" shows an *incredible* one-day turnaround between *default* and default *claim payment.*

[32] The lack was reported, in my Request for Review [see 10/30/97, AR 14], and corrected in 1999 [see SAR 454].

[33] 34 CFR 682.200(a)(1) defines "eligible student" by Part 668, as does § 682.201 for "eligible borrowers," where 668.32(e)(1) *requires* a high school diploma or its recognized equivalent for program eligibility, it did not appear an avoidable prerequisite by otherwise administering a testfor *eligibility determinations before* 1986—when subsec. (d) was added to 20 USC 1091 (not listed as interpretive law in Note's XII) by Pub. L. 99-603. * * *

[34] *See* "007926" at top of Note [AR3] & at "SID" of AR 5 school i.d. # (per "RI07" explanatory sheet), described as "originating school: 007926 Travel and Trade Career Institute" [TTCI] at SAR 170.

[35] As the sole "loan" EDUC recorded under my identifiers [AR 185-88], the alleged 6/21/85 disbursement [AR 5] violated first-time student/borrower disbursal limits of $1,500 * * * quarterly) [(1984) 34CFR 682.401(b)(3)(ii)] and the $1,500 *maximum loan amount* for single installment disbursals [(1982) 20 USC 1075(a)(1)(B)]; nor is there any hint that TTCI was able to originate this first "loan" based on prerequisite prior-lender-denial [*id.* 1083(a)(1)(B)].

[36] According to the inference in EDUC's 11/12/98 letter (Compl. Ex. J) [see SAR 80-1], *I have never seen the alleged 6/21/85 disbursement, nor any lender source, document or record that shows it.*

financial assistance fraud EDUC knew before offset against me (see quotes, p. 6 supra). From its own financial/information-management dilemma,[37] EDUC ignored: CSAC guaranteed some "loans" from school, not lender, submissions;[38] allowed unsupervised lender overrides of loan status;[39] and third-parties could transfer loans between two banks.[40] In 1992,[41] EDUC rejected $800,000 of fraudulent claims (i.e., improperly serviced, no records)

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[37] *E.g.*, US General Accounting Office Reports:
Federal Family Education Loan Information System: Week Computer controls Increase Risk of Unauthorized Access to Sensitive Data 6/95, AIMD-95-117 • Education Financial Management: Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 3/28/02, GAO-02-406 • Education Financial Management: Weak Internal Controls Led to Instances of Fraud and Other Improper Payments. 4/10/02, GAO-02-513T • Education Information Security: Improvements Made But Control Weaknesses Remain. 9/12/01, GAO-O 1-1 067
• (Performance and Accountability Series and High Risk Update 2001) Major Management Challenges and Program Risks: Department of Education, GAO-01-245
Also, under main title of FINANCIAL MANAGMENT: • Financial Management Weaknesses at the Department of Education. 12/6/99, T-AIMD-00-50. • Education Faces Challenges in Achieving Financial Management Reform. 3/1/00, T-AIMD-00-I06. • Educations Financial Management Problems Persist. 5/24/00, T-AIMD-00-180. • Financial Management Challenges Remain at the Department of Education. 9/19/00, T-AIMD-00-323. • Internal Control Weaknesses Leave Department of Education Vulnerable to Imoroper Payments. 4/3/01, GAO-01-585T. • Poor Internal Control Exposes Department of Education to Improper Pavments. 7/24/01, GAO-01-997T • Poor Internal Controls Expose Department of Education to Improper Pavments. 9/28/01, GAO-01-1151

[38] See Finding 1 at SAR 284 (of 7/10/92 report on CSAC [SAR 283-302], disclosed by EDUC 9/10/01 [SAR 281])

[39] See Finding 19 at SAR 317 (of 6/10/94 report on CSAC [SAR 303-325], disclosed by EDUC 9/10/01 [SAR 281])

[40] See Finding 27 at SAR 296 (of 7/10/92 report on CSAC [SAR 283-302], disclosed by EDUC 9/10/01 [SAR 281])

[41] This is the same year as the "endorsement" of the subject Note; no explanation is given for its different treatment.

from CSAC/Bank of America[42] (the EDUC43[43] claim "originating" lender).[44] The CPR provides remedial action for each entity.[45]

> ...what we said in Burlington Truck Lines, Inc. v. United States, 371 U.S., at 167 is apropos here: *[¶]* "There are no findings and no analysis here to justify the choice made, no indication of the basis on which the [agency] exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such...practice... .Expert discretion is the lifeblood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' New York v. United States, 342 U.S. 882, 884 (dissenting opinion)[46]" (footnote omitted). *[¶]* We have frequently reiterated that an

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[42] *See cumulatively,* Finding 32 at SAR 300-1; Finding 3-C at SAR 309-10; and Finding 1 at SAR 331-32 (of 8/14/98 report on CSAC [SAR 326-37], disclosed by EDUC 9/10/01 [SAR 281])

[43] "...Bank of America, Education's contractor for government purchase cards.. ." GAO-01-585T, p. 12, 4/3/01

[44] *See* SAR 170: according to EDUC's "(LI09) Debt Level Information Screen" dated 1/23/01, neither "Originating lender: 801178 B of A trustee c/o cmsc" nor "claiming lender: 801178 B of A Trustee C/o cmsc po Box 92025 Los angeles CA 90009-2025" match the lender of the Note, First Independent Trust #828374 [AR 5]

[45] *See* 34 CFR 682.609 Remedial Actions (for participating schools), *and* 34 CFR 682.413 Remedial Actions (for guaranty agency, lender and [any applicable] third-party servicer)

[46] Continued/ended: ".. .Absolute discretion, like corruption, marks the beginning of the end of liberty. This case is perhaps insignificant in the annals. But the standard set for men of good will is even more useful to the venal." *id.*

agency must cogently explain why it has exercised its discretion in a gIven manner, Atchison, T. & S. F. R. Co. v. Wichita Bd. of Trade, 412 U.S., at 806; FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 249 (1972); NLRB v. Metropolitan Life Ins. Co., 380 U.S. 438, 443 (1965); and we reaffirm this principle again today. Motor Vehicle Mfrs. Assn. v. State Farm Mut., 463 U.S. 29, 48-49 (1983).

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De Novo Review of Requests to Correct (and Chances to Disagree on) the Record

> In any suit brought under the provisions of subsection (g) (1) (A) of this section...the court shall determine the matter de novo. 5 USC 552a(g)(2)(A)
>
> Whenever any agency (A) makes a determination under subsection (d) (3) of this section not to amend an individual's record...or fails to make such review in conformity with that subsection...5 USC 552a(g)(1)(A)
>
> Each agency that maintains a system of records shall...(3) permit the individual who disagrees with the refusal...to amend his record to request a review...and not later than 30 days...make a final determination...[and] permit the individual to file a concise statement setting forth his reasons for disagreement...and notify...of the provisions for judicial review of the...determination...5 USC 552a(d)(3)

Remedy for agency refusal to amend the account records, or to review disagreement therewith, arises in this suit

[*i.e.*, #39, Compl. p. 14]. When EDUC's inadequate records [see Records Maintenance etc., *infra*] introduced "summaries" of letters [i.e., AR 15-19] (*vs.* noting receipt/misinterpreting content—thus, refusing to correct/amend or annotate files and withholding due process [e.g., AR 13-14]), two "interpreted" triggers for APA chance to address errors/disagreement appear: "ACCT HAS BEEN HELD OPEN IN ERR" [AR 16] and "HE ASKS US TO FORWD COPIES OF OUR CORR FOR FILE WHEN RETURNING ACCT TO OUR EMPLYR" [AR 17]. Errors did not end with the source, but continued under EDUC's hand.

> The agency's findings "must...be set aside when the record before a Court of Appeals clearly precludes the [agency's] decision from being justified by a fair estimate of the testimony of witnesses or its informed judgment on matters within its special competence or both." *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474,490 (1951).

EDUC admits that noting a letter's receipt does not preserve detail, comments or requests therein,[47] yet, on 6/25/96-2/18/97, and as of 11/6/00, [AR13-14 & 20] EDUC accepted such "entries" in violation of responsibilities under the APA [5 USC 552a(m)(1)] and the FCCS [4 CPR 102.6(a)]; signaling waiver to contractors of provisions[48] to immediately suspend activity/refer to EDUC in 5 days any disputes to amount owed "for example, that the debt was never incurred..." *and* legal defenses, "...fraud, forgery..." [SAR 364-5]; and leading, by such example, in

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[47] *Defendant's Answer to Plaintiff's Requests for Admissions*, Admission 5 at SAR 248

[48] EDUC supplied [see SAR 349-50] the Statement of Work Private Sector Collection Activity For Student Related Debts updated 6/7/00 [SAR 351-80] for all separately-requested agreements with involved collection contractors by my 7/27/01 Requestsfor Documents #17-22 [SAR 230-1]; the related explanatory pages (limited to portions/on datum specifically identified) for id #24 [SAR 231-2] were produced by EDUC/appear at SAR 381-431.

the deterioration of the intent and effect of, among other related laws, the Debt Collection Improvement Act of 1996 [*see* Compl. p. 13, #36-b].

Given such obvious deficiencies in EDUC's "Collector Note Pad;" disparities in the details/nuances presented by the parties about due process-triggering exchanges; my filing descriptions/copies of inter-party exchanges with the Complaint prior to access to

related agency productions; and good-faith disclosure of the details of my records during prior court-ordered exchanges: for de novo review to fairly ascertain when correction or review of, or appending statement of disagreement to, the account record was called for, my submissions qualify for Residual Exception (FRE 807), having sufficient distinctive characteristics (i.e., in content/circumstances, corresponding opponent documents and records, etc.) for FRE 901 (b)(4) authentication/identification of SAR 23-146, 189-199. Further, because the integrity of the agency records are reasonably in dispute, and the subjects of many of those "summaries" were my own communications, then my notes, records, and original writings related to EDUC's summaries are required under FRE 106.

Correction of EDUC Internal Records—besides the abysmal lack of foundation for pursuing the EDUC claim against me (instead of the source(s) of misuse of the Note), and admitted inadequacy of the first eight months' of recording contact *from* me, false entries in EDUC's internal records must be corrected to reveal due process triggers.

Major disparity arises on the early "history" of contact on the account. I asserted I was not contacted, after withdrawing on the first day of class without receiving a loan check, until I received/answered one demand at my California home from EDUC in 1993, then was not contacted again until 1/96 at my present home, when I promptly replied [Compl. #7 & 10, pp. 2 & 3-4]. EDUC disagreed on when the initial demand I received was sent

[Ans. #7, p. 2], claimed records show "demand letters were sent to Plaintiff's California address in 1993, 1994 and 1995" [id #10, p. 2], that initial *dispute* requested the Note on 6/25/96 [id. #10-b], and that CSAC records "indicate that notices and demands for payment were sent to Plaintiff as early as February 26, 1987" [id. #14-b, p. 3].

That CSAC record is not in the "Administrative Record;" it reveals EDUC's demands were not sent to my California address in 1993, 1994 and 1995. (*See De Novo Review of Agency Adjudicatory Action/Inadequate Fact-finding Procedures,* Contact History Report dated 12/31/92, #D, *supra. Cf.* AR 9-11 at 2/14/95-5/26/93). While a successful forwarding, failure to record response, and post office round-robin for a common name

are plausible coincidences, EDUC regulations require prompt "skiptracing" (*see* SAR 358 and 32 CPR 682 .411(g)). *Cf.* earliest three (and 12 of 18) demands to CSAC's known "bad address" were recorded "U" Returned Undeliverable. [AR 9-11]. EDUC admits to having known my California driver's license number...[SAR 251].

EDUC's Collector Note Pad simulates record maintenance, but, I was more likely to ask for the "verification of debt" offered, than to specify the promissory note, as EDUC's early records reflect.[49] Deliberate exclusion of express due process triggers from EDUC "records" appear between SAR 50 *and* AR 14 at 1/24; SAR 51 *and* AR 14 at 2/18; SAR 75-6 *and* AR 14 at 4/3; SAR 79 *and* AR 15; SAR 84 *and* AR 16 at 11/15; SAR 88 *and* AR 16 at 12/21; SAR 91 *and* AR 17 at 12/28; SAR 96 *and* AR 19 at 1/26 and SAR 99 *and* AR 19 at 2/7: this many occurrences cannot be inadvertent.

A Due Process Anomaly in the Record appears only when reviewing for referrals. Ordinarily, DOJ/GAO referrals "should be made within one year of the agency's

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[49] *Cf.* SAR 23 *and* AR 13 at 6/26; SAR 25 *and* AR 13 at 6/27; SAR 29-30 *and* AR 13 at 7/3, SAR 32-33 *and* AR 13 at 8/27, SAR 34 *and* AR 13 at 8/28

final determination of the fact and the amount of the debt," under 4 CPR 105.1(a), which is consistent with EDUC Debt Collection 34 CFR 30.1(a), guaranty agency requirements 34 CFR 682.410(b)(7)(v), and collection contractor Statement of Work, Recall of Accounts ¶4.1-A [SAR 365]. Referral was inconsistent with the record of the EDUC claim due to the absence of evidence expected under 4 CFR 105.3. The first three collection contractors for the EDUC claim adopted EDUC's practice, and held the account for 28 months, 24 months, 14 months before returning it without activity [SAR 182].

Record of Privacy Act violation—by contractor disclosure, outside its own activity, of alleged prior review information, in violation of 5 USC 552a(b)(7) portion/ activity limitations, and with EDUC contract monitor knowledge (*see* Compl. #34-5, pp. 11-12, and Compl. Ex. L [SAR 108])—includes an inexplicable (versus a more normal business choice, to *correct* the act of omission), undated addendum, "BROWN PER PREV NOTES. .DID NOT FRWRD CPY TO MARY PATTERSON. NBROWN" [AR 20 at 4/7/00]. EDUC professes it "lacks sufficient information to admit or deny. ..regarding his Complaint to the Colorado

Collection Agency Board and therefore denies" [Ans. p. 8], but that contract monitor appears on the record from 1/27/00 through 6/20/00 [AR 19-20, Source Code ED4246]. The other violation (re: AR 9) is the topic of Response to Interrogatory No.2 [SAR 202].

Federal Assistance Program Fraud; Mail Fraud; etc.

> "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf' *United States v. Bostwick,* 94 U.S. 53,66 (1877); *Cooke v. United States,* 91 U.S. 389,398 (1875) (expl. when United States "comes down from its position of sovereignty, and enters the domain of

commerce, it submits itself to the same laws that govern individuals there.")

Since 1993, EDUC has elected engage[sic] me on the terms of a contractual relationship, waiving immunity by the act of claiming that relationship; it should be subject to the liabilities/penalties of its fraud as the non-immunized entity that presented the demands. EDUC's actions in this matter have been in classic expression of Program Fraud under 34 CFR 33.3: it made claims EDUC knew or had reason to know were false or fraudulent, that included or were supported by statements that omitted material facts, were false and fraudulent, in which EDUC had a duty to include the material facts; each claim or other individual request or demand for money constituted a separate claim when it was actually made to me, and each should be subject to a civil penalty and twice the amount actually collected as damages.—only EDUC was acting under color of authority. Presenting demands through the Postal Service for payment of a "loan" without response equal to that required of the original lender to my valid defense of the obligation, fell within the meaning of mail fraud, under 18 USC 1341; EDUC incurred liability each time it engaged in such activity. On the basis of a non-immunized contractual relationship with me, EDUC certified the EDUC claim for Treasury offset in violation of 18 USC 1001.

Conclusion, statement about relief, and signature

I believe there are innumerable more details and issues that comprehensive review of these matters would reveal, but we (my wife and I) have exhausted ourselves and the allotted pages for presenting this much of these considerations in "brief' for this case.

-17-

I seek the same relief identified in the Complaint [*see* Compl. #4, p. 1, and #29, p. 10 (seeking some remedy to the loophole through which EDUC held me in Catch-22 for so long, so it does not happen to others), and 39-42, pp. 14-15, to the extent of this Court's authority], and am

unable to expand on that at this time—except to ask that if certain claims must be dismissed it be without prejudice so options are not unfairly closed to me—ddue to the continual burdens of meeting preliminary-matter deadlines in this case to and including this filing. I do believe an adequate, detailed enumeration could best be briefed after this District Court's determinations on the main issues, to narrow the field of appropriate concentration for me, and give me a point of reference for research.

"Grievous loss" being subjective, from our (I include my family as we are all impacted) perspective, we measure treasure not in our tangible assets or cash (no doubt because of the ease of its counting), but in minutes of quality time with loved ones that EDUC can't' replace, having stolen unbelievably much of it by petty accusations and disproportionate requirements to answer them. A good name, no matter how few are impressed by it, is valuable to its owner/family. The loss and threats here were large to us: years have been wasted, insult sustained, and respect for our government diminished. The APA, Privacy Act, Civil Rights Act, EDUC's own regulations, *et. al,* separately and combined, provide only theoretical individual protection: adherence to reason and rule, and independent verification of "contract" details-such as EDUC's 1993 stake in my obsolete 6/17/85 signature—*before* action (in 2000!). This was a dirty fight; a fair one was not to be had.

Headings and table listings (i.e., contents) herein are descriptive, and not meant to limit. This Opening Brief incorporates my Complaint filed 1/8/01 and the Footnotes below (I believe they are correctly counted as part of the 20-page limit by Order dated 4/22/02); and relies, without indicating adoption or rejection of the contents, on the body of the administrative record/supplements also submitted under that Order. This is not meant to waive my prior submissions/filings in pursuit of my cause in this matter.

Noting persons had to work in concert to protract for 9 years a most simple defense (what loan)?, and that US attorneys and magistrate judges are required to institute prosecutions agains persons decribed in 18 USC 241, at government expense, under 42 USC 1987; this Opening Brief is respectfully submitted this 31st day of July, 2002.

s/Bruce Edwards

Plaintiff pro se
1001 Emporia Street
Aurora, CO 80010-3825
(303)341-9433 (non published, home)

Footnotes * * *[set forth in text above]

#109 Response (cf. #41 Brief) 8/30/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Filed U.S. District Court District of Colorado BB
2002 AUG 30 AM 10:22 James R. Manspeaker Clerk by C Dep. Clk

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF EDUCATION
Defendant

DEFENDANT'S RESPONSE BRIEF

Defendant United States Department of Education, by and through United States Attorney John W. Suthers and Assistant United States Attorney Peter Krumholz, hereby files this Response Brief. For the following reasons, Defendant respectfully submits that its administrative decision should be affirmed and Plaintiff's complaint should be dismissed.

INTRODUCTION

Plaintiff seeks to have this Court review a final agency decision under the Administrative Procedure Act, 5 U.S.C. § 704 with regard to the validity of his student loan debt. Complaint, ¶ 2. As discussed below, Defendant's administrative decision upholding the validity of the debt was not arbitrary or capricious, an abuse of discretion, or otherwise contrary to law. Accordingly, judgment should enter for Defendant and this action should be dismissed.

STATUTORY AND REGULATORY BACKGROUND

A. Overview of the Federal Family Education Loan Program

Under the Federal Family Education Loan Program ("FFELP"), a private lender provides the student with the money and a State or non-profit guaranty agency guarantees the loans. The Department of Education

serves as the reinsurer of the loans pursuant to a reinsurance agreement with the guaranty agency. If a borrower of a FFELP loan defaults, files a bankruptcy petition, dies or becomes disabled, the guaranty agency reimburses the holder of the loan, takes assignment of the loan and promptly claims reimbursement from the Department of Education under its reinsurance agreement. 34 C.F .R. § 682.406. Even after the Department of Education pays the reinsurance claim, the guaranty agency is under an obligation to use due diligence to collect on the loan. If the guaranty agency is unsuccessful in collecting the loan, it may assign the loan to the Department of Education, which then takes title of the loan and engages in its own collection efforts.

Under the Higher Education Act and the applicable regulations, the Department of Education provides Title IV borrowers with relief from their FFELP loan obligations for death, total and permanent disability, false certification, closed school, and unpaid refunds. In general, requests for any type of administrative discharge relief are made to the current holder of the loan. Borrowers who received FFELP loans on or after January 1, 1986 may obtain a total or partial discharge of their loan obligation if the school they attended failed to make a refund that would have been applied to reduce their loan balance. 34 C.F .R. § 682.402. Borrowers who have FFELP loans that were disbursed prior to January 1, 1986 are, according to the Department of Education's policy, eligible for the same unpaid refund relief as those borrowers whose FFELP loans were disbursed after January 1, 1986.

FACTS

1. On June 17, 1985, Plaintiff signed a Promissory Note, for a Stafford loan in the amount of $2,500.00 at 8% interest. Administrative Record ("AR") at 3. First Independent Bank was the lender and the California

Student Aid Commission (CSAC) guaranteed the loan. *Id.*

2. Plaintiff defaulted on his loan on April 15, 1987. *See, e.g.,* AR at 5 ("DFTDTE: 4/15/87"). In a series of letters and phone calls dating back to at least 1993, Defendant has unsuccessfully attempted to secure payment on the loan from Plaintiff. *See* AR at 6-22 (detailing history of correspondence and telephone contact with Plaintiff).

3. Plaintiff finally sent a letter to Defendant contending that his student loan debt was too old to be enforceable. *See* AR at 20.

4.In an August 31, 2000 letter, the Department of Education responded to another letter from Plaintiff, explaining that there is no longer a statute of limitations on collection of student loans and that it would continue to refer his debt for collection until his debt was paid in full. AR at 1-2. In addition, the letter explained that "[a]ny account with the U.S. Department of Education... that has a balance and is not in repayment is eligible for referral to the U.S. Department of the Treasury's Financial Management Service for offset." *Id.* at 1.

5.As of May 9, 2002, Plaintiffs balance is $5,316.82.

ARGUMENT

I. DEFENDANT'S REJECTION OF PLAINTIFF'S ADMINISTRATIVE CLAIM WAS NEITHER ARBITRARY, CAPRICIOUS NOR AN ABUSE OF DISCRETION

The Department of Education's actions here are judged under the standards established in the Administrative Procedure Act, 5 U.S.C. § 706. This requires Plaintiff to demonstrate that the Department of Education's actions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...." 5 U.S.C. § 706(2)(A). While the court's inquiry here must no doubt be "searching and careful," it is well settled that

such inquiry is ultimately narrow and limited to "whether the [Secretary's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416 (1971); *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1426 (6th Cir. 1991). Indeed, the court "is not empowered to substitute its judgment for that of the agency." *Overton Park*, 401 U.S. at 416. The agency's decision must be affirmed if it is rationally based. *Bowman Transp., Inc. v. Arkansas Best Freight Sys.*, 419 U.S. 281, 285 (1974). In this case, Plaintiff seeks review of the Department of Education's August 31, 2000 letter rejecting his claim that his loan is unenforceable due to the statute of limitations and that his loan is ineligible for collection through the Treasury Offset Program ("TOP"). Prior to the issuance of that letter, the Department had issued a series of sound administrative decisions with regard to Plaintiff's various arguments protesting his obligation on this student loan. The final decision, which is at issue in this lawsuit, was Ms. Spadoni's letter dated August 31, 2000. AR at 1-2. This and each prior decision was made in accordance with the law regarding the statute of limitations for collection of student loans and TOP, and in light of the factual circumstances of Plaintiff's situation and his arguments why he did not owe the loan. It was not arbitrary or capricious and should be upheld.

The initial dispute preceding the August 31, 2000 decision began in 1997 when Plaintiff raised his first objection to certification of his account in TOP. According to the Treasury and Department of Education regulations, on September 5, 1997 , the Department of Education sent Plaintiff a notice to his last known address informing him that his student loan debt would be certified for TOP and that his federal benefits would be

offset.[50] Declaration of Nicholas Navarro ("Navarro Decl."), 24 (attached as Exh. 1 to Defendant's Memorandum Brief in Support of Motion for Summary Judgment filed Oct. 1,2001).[51] The notice stated: (1) the nature and amount of his debt, (2) Education's intent to offset, and (3) offered Plaintiff the opportunity to (i) inspect and copy relevant records; (ii) obtain a review within Education of the existence or amount of the debt; and (iii) enter into a written agreement to repay the debt. *See* 34 C.F.R. § 30.22(b)(3). In response, Plaintiff submitted a request for review objecting to the decision to certify his account for TOP because TTCI signed his loan documents and falsely certified his ability to benefit. Compl. 22; *see* 34 C.F.R. §682.402(e). Ms. Shirley, a Department of Education employee, responded to his Request for Review in a decision dated October 30, 1997. Navarro Decl. ¶ 24. In this letter, Ms. Shirley stated that the Department of Education noted his objection to the offset with regard to the false certification for ability to benefit, but that pursuant to regulations, he could only qualify for this administrative discharge if he obtained his loan after January 1, 1986 and he submitted a sworn statement. Ms. Shirley also noted Plaintiffs objection to the loan based on a claim of unauthorized signature, but that he was required to submit a sworn statement for this claim also. *See* 34 C.F .R. § 682.402(e). Ms. Shirley

---

[50] The Department of Education had been sending N18 notices to Plaintiff annually since 1993; however, it was not until 1996 that the notice was successfully delivered to him. Navarro Decl. ¶ 24.

[51] Although judicial review is generally confined to the record made before the agency and may not include matters outside that record, the court may make exceptions where it is necessary for the court to have an explanation of complex matters of a highly technical nature. Franklin Sav. Ass'n. v. Director, Office of Thrift Superv., 934 F.2d 1127, 1137-1138 (10th CiR. 1991). Here, where the administrative record consists almost entirely indecipherable computer screen printouts, the declaration of Mr. Navarro has been supplemented to help explain the record.

provided Plaintiff with the applications for both the ATB and unauthorized signature administrative discharges. Ms. Shirley's decisions in her letter were in accordance with Education's regulations and Plaintiffs specific objections to his loan obligation and certification of his account in TOP.

On April 3, 1998, Ms. Shirley received a letter from Plaintiff in which he stated that he did not qualify for either the ATB or unauthorized signature administrative discharges because he did not have anything to do with TTCI after the first class. Navarro Decl. ¶ 27; Compl., Exhibit H. He did not return either of the Discharge applications with his April 3 letter. On September 2, 1998, the private collection agency to which Education had referred Plaintiff's account received a letter from Plaintiff. Navarro Decl. 28. In this letter, Plaintiff stated that he did not dispute that he requested the loan but argued that he did not attend TTCI after the first class, that he was never contacted by the school after he submitted a withdrawal slip, that he never received any documents regarding the loan until 1993 and then not again until 1996, and that he has not received a response to his hearing request. *Id.* On November 12, 1998 Education sent Plaintiff a letter, signed by Ms. Spadoni, responding to his letter to the collection agency. *Id.*, ¶ 29; Compl., Exhibit J. The letter pointed out that it is Plaintiff s responsibility to maintain contact with the holder of his loan and that the promissory note is a binding, legal document enforceable against him.[52] The letter stated to him that school loans are, by law,

[52] The Department of Education conducted skip traces to attempt to find Plaintiff's address and telephone number, including obtaining address information from Plaintiff's tax returns through IRS. *See* Navarro Decl., Exhibit E. Despite obtaining address from IRS and skip traces, notices sent to Plaintiff were still returned as undeliverable.

disbursed by checks or electronic funds transfers, which must be sent to the school attended by the borrower, and typically applied to the student's tuition and expense, and that the student may never directly receive any loan money. The letter also stated that if Plaintiff has evidence that he is due a refund from the school, he could submit such evidence to the Department of Education for investigation. Navarro Decl. ¶ 29. This decision was in accordance with Plaintiff's promissory note, the Higher Education Act and regulations governing unpaid refunds, and common law principles governing loan contracts.

On August 31, 2000, the Department of Education sent another letter to Plaintiff, signed by Ms. Spadoni, responding to correspondence from Plaintiff wherein he argued that his loan was too old to be collected and that his account should not be certified for TOP. *See* AR at 1. The letter noted that the Department of Education was permitted to collect his loan despite its age because the applicable amendments to the Higher Education Act of 1965 eliminated the statute of limitations on collection of student loans. *Id.* The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), Pub. L. No. 99-272 §16033, 100 Stat. 355 (1986) as enacted, had placed a Federal six year statute of limitations period, commencing upon assignment to the Department of Education, for suits to collect student loans held by the Department. However, the Higher Education Technical Amendments of 1991 (HETA), Pub. L. No. 102-26 §3(c), 105 Stat. 123 (1991), amended COBRA to remove the six year statute of limitations and made that change effective retroactively for any actions pending at the time COBRA was passed. The amendment states that no Federal or state law "shall terminate the period within which...a judgment may be enforced..." on a Title IV student loan by the Department, the U.S. Attorney General, the guarantor, or the school (for Perkins loans). HETA § 484A (codified as amended at

20 U.S.C. §1091a). Prior to July 1992, HETA contained a "sunset date" which limited the new law's effect to those action taken prior to November 15, 1992. HETA § 3(c). However, HETA has been amended to eliminate the sunset date. Pub. L. No. 102-325, §1551, 106. Stat. 838 (1992) (codified as amended 20 U.S.C. §1091a); *see also United States v. Phillips*, 20 F.3d 1005, 1007 (9th Cir. 1994) (finding that HETA eliminated all statutes of limitations on actions to recover on defaulted student loans and revived borrower's loans which were assigned to the Department of Education in 1976 and 1984).

In response to Plaintiff s objection to certification of his account in TOP, the Department of Education's letter pointed out that he had been given notice on September 5, 1997 of the Department's intention to certify his account for TOP and that if he did not respond to the notice, his account would be referred for offset on December 30, 1997. AR at 1. Since Plaintiff did not raise this objection until nearly three years after the September 5, 1997 notification, it was untimely. Therefore, the Department of Education correctly found that Plaintiff had been given notice prior to the offset required by 31 U.S.C. §§ 3716 and 3720A, and that because Plaintiff failed to respond in a timely manner, it had properly referred his debt to Treasury for collection by TOP, and the resulting offset of his federal benefits was valid. Thus, the Department's decision that Plaintiffs loan was outstanding and enforceable and that Education had provided him proper notice prior to offsetting his federal benefits in TOP was reasonably based on the factual circumstances of Plaintiff's loan history and applicable legal principles and statutes. The Department of Education's decision was not arbitrary or capricious nor was it an abuse of discretion and it should be upheld under this review.

CONCLUSION

Accordingly, for the reasons set forth herein, Defendant respectfully requests this Court to uphold its final administrative decision with regard to Plaintiff's student loan.

DATED this 30th day of August, 2002.

Respectfully Submitted,

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s/Peter Krumholz
Peter Krumholz
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#110 Reply Brief 9/17/02

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

{Filed U.S. District Court Denver Colorado
SEP 17 2002 James R. Manspeaker Clerk[1]}

Civil Action No. 01-BB-36 (MJW)
BRUCE EDWARDS,
Plaintiff *pro se*

v.

UNITED STATES DEPARTMENT OF EDUCATION
Defendant

Plaintiff's Reply to Defendant's Reponse Brief

A regurgitated *Defendant's Memorandum Brief in Support of Motion for Summary Judgment or, in the Alternative, Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)* filed 10/1/01 ignores my 7/31/02 *Opening Brief* and 1/8/01 *Complaint*. "Here, where the administrative record [filed 5/15/02] consists of almost entirely indecipherable computer screen printouts, the declaration of Mr. Navarro has been supplemented to help explain the record," (*Def.'s Response Brief* [8/30/02, p. 5, n. 2).

> "De novo review of whether the [agency's] decision was 'unwarranted by the facts' is authorized by 706(2)(F)...when the action is adjudicatory in nature and...agency fact-finding procedures are inadequate." *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415 (1971)
>
> "[A Court] failed to engage in a substantive review of the record to determine if the agency considered relevant factors or articulated a reasoned basis for its conclusions. Instead it relied on the *post hoc* rationalizations of counsel or attempted

[1] Filed via facsimile Sep. 16, 2002 11:32-11:41 pm; received file-stamped confirmation faxed Sep. 17 2002 7:08 Clerks Office U.S.D.C.

itself to supply a reasoned basis for agency action without regard to the contents of the administrative record. Any one of these errors would warrant reversal; their cumulative effect mandates it." *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994)

Fig. 1: The Rasca Declaration *supplement* might say, "On October 3, 1985, 'Peter Krumhol' signed for Pell Grant checks...Ana Morton verified units and progress on the receipt," *if TTCI* "recorded"...

Travel and Trade Career Institute[2]
Student Assistance Account United California Bank
Federal Funds Bixby Knolls Office
3635 Atlantic Ave. 4210 Long Beach Blvd.
Long Beach, CA 90807 Long Beach. Ca 90807
16-21/132 1220 CHECK No **4136**[3]
DATE SEPT 24, 1985 AMOUNT $656.00
PAY 656 DOLLARS AND 0 CENTS TO THE ORDER OF
PETER KRUMHOL 505-05-0505
1255 17TH ST 700 DENVER, CO 80202
MUST HAVE COMPLETED 18[4] UNITS FOR THIS
CHECK. TH1S CHECK IS FOR STUDENT PELL: 656
NOT-NEGOTIABLE s/~~*Rodger Erickson*~~
"004136":122000218:13293208 2"11 Authorized Signature

---

[2] *See* 11/20/00 Response to dispositive motion at Encl. 9:
Borrowed at Name: TRAVEL & TRADE CAREER INSTITUTE
"Supplements" are from THE LOAN/GRANT REQUEST ORIGINATOR in control of all related financial and 'student records' for the UNCANCELLED check "receipts."

[3] *See* 10/1/01 dispositive motion, at "Exhibit 2" attachment C

[4] Conflicting: "verification by Ana Morton."

PET ... 505-05-0505
09/24/85 CHECK # 4086[5]

RECEIVABLES	TUITION & FEES	3755.00
	PRIOR PAYMENTS	2459.58
	BALANCE OWED	1295.42
	THIS CHECK	975.00
	NEW BALANCE	320.42

[6]

FINANCIAL AID ADVANCES

	NDSL	SEOG	CWS
PRIOR CHECKS	0.00	0.00	0.00
THIS CHECK	0.00	0.00	0.00
NEW TOTAL	0.00	0.00	0.00

CHECK No 4137

PELL	TOTAL
1631.00	1631.00
319.00	319.00
1950.00	1950.00[7]

PRIOR PAID TO SCHOOL: 2339.58[8]
PAID TO STUDENT: 0
THIS CHECK IS FOR $656.00 FOR STUDENT
RECEIPTED BY x[apparently s/]*Peter Krumhol*
DATE *10/3/85*[9] STUDENT'S SIGNATURE
UNITS COMPLETED 0.00[10] AS OF 0/0
UNITS VERIFIED BY *AM*
ADDRESS VERIFIED BY *AM*
SATISFACTORY PROGRESS VERIFED BY *AM*

Even in 1985, a signature could be traced over carbon/carbonless paper to "produce" a "copy" simulating an "original" record:
[apparently] s/*Peter Krumholz*

---

[5] *See* 10/1/01 dispositive motion, at "Exhibit 2" attachment B
[6] *See* 10/1/01 dispositive motion, at "Exhibit 2" attachment D
[7] Exceeds 1984/85 $1,900 max.: P.L. 98-139, Title III §300 10/31/83 97 Stat 891
[8] Exceeds 1st time borrower single installment $1500 maximum limit: 1984 ed. 34 CFR §682.401(b)(3)
Cf. AR at 3: "Amount Financed $2341.67"
[9] *Cf.* Ex. 2 p. 3: "ANC stands for "Absent No Call" *and* Ex. 2's garbled "Exhibit F": 10/02/85 0.00 ANC
10/03/85 0.00 ANC
(RE: "Ex. 2-C" & Ex. 2-D")
[10] Conflicting: "verification by Ana Morton."

Cf. **11/20/01 Response to dispositive motion at pp. 17 and 4, respectively, sets forth "prior records" certified Discovery:**

Admission 2: With regard to EDUC claim against Plaintiff, Defendant does not have, and has not provided Plaintiff, a copy of the original receipt from the school at the time of the alleged 6/21/85 loan advance into the school's account purportedly on Plaintiff's behalf. Answer: Object to admission as unclear and ambiguous as to definition of "original receipt from the school." Subject to and without waiving this objection, admit that Defendant has not provided Plaintiff with a receipt of loan from school because no such receipt exists.

Admission 7: Prior to Plaintiff's original 1/2001 filing with this Court in this matter, as far as contact by other program participants with Plaintiff after the alleged 6/21/85 disbursement, Defendant did not provide Plaintiff with any copies of school (TTCH), lender or state guarantor (CSAC) records or documents related to the EDUC claim against him. Answer: Admit that, prior to this suit, Defendant did not have possession of any documents nor was it required to obtain possession of any such documents from the school, lender or CSAC (besides the promissory note that was obtained from CSAC upon assignment of the loan to Defendant).

"The declaration of Mr. Navarro has been supplemented," like its brief, by entra-record, post-suit additions of a *partial* page, "Exhibit A (Appliation)" (*Navarro Decl.* p. 7), *allusion* to California Student Aid Commission (CSAC) "history" (*Id.* and *Ans.* p. 3), and *1985* "records" of *an alleged grant* by originator, Travel and Trade Career Institute (TTCI) (EDUC brief filed 10/1/01, p. 5).

Fig. 2: 11/20/01 Response in Opposition to Motion to Dismiss (named per 10/26/01 Order) sets forth discovery about incomplete "exhibits"...

at p. 2...	**Admission 20** * * *[11]	Answer * * *[12]
at p. 4...	**Admission 1** * * *	Answer * * *
	Admission 6 * * *	Answer * * *[13]
at p. 5...	**Admission 26** * * *	Answer * * * [14]
at p. 10...	**Admission 22** * * *	Answer * * *
at p. 11...	**Interrogatory No. 25** * * *	Reponse * * *
	Interrogatory No. 26 * * *	Reponse * * *
atp. 13...	**Interrogatory No. 50** * * *	Reponse * * *

at p. 17-18...*(Note:* dispositive "Exhibits 2/B-2/D = US000004-6)

Admission 18 * * * Answer * * * [15]

Admission 14 * * * Answer * * * [16]

at p. 19... **Request No. 8** * * * Response * * *

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[11] *See* 5 USC 552a(p)(1) *independent verification* required *for offset*

[12] *See* 34 CFR 30.24 (e) has no such negation; review is to include "other relevant evidence..."

[13] *See* AR at 14-20 clear identification: lender performance is in dispute, *not pre-loan signing of the note...*

[14] *Cf.* FRE 801(d)(2), 803(10), required retention at 34 CFR 682.414(a091) & Declaration of Nicolas Navarro at p. 3: ***"loan records include...application...guaranty claim, correspondence, payment records, and other records that evidence transactions between the borrower and the holders...and the original lender..."***

[15] Whereas the "copy of 'Peter Krumhol's' TTCI Pell grant receipt" (*see* Fig. 1), a 21st Century acquisition also, would be easier to generate at TTCI *either in 1985 or 2001:* given their places *outside* agency records/EDUC pre-suit decisions, *normal* 3-yr school retention under 34 CFR 682.610(a)(2), & limited "cover" (: their irrelevance is well established (*cf.* Fig. 3).

[16] *see:* Fed. Rules of Evidence Rule ("FRE") 1004 (1) on bad-faith destruction by proponent; *but notably* FRE 803 at (8) & (10): absence from regular recors *is* proof of non-occurrence

Based on "FACTS" in a 1985 First Independent Trust promissory note and EDUC-system date, entered as of 5/25/93, (*see Defendant's Response Brief,* p. 3, *and* AR5), final decision of validity regarding the EDUC claim for a CSAC/Bank of America loan and default was clearly erroneous.

Fig. 3: No Agency Document/Record Shows Transfer of the Note EDUC "Holds" *to* Bank of America

AR at 5[17] **+ * * * EDUC #US000071**[18] **≠ AR at 3**[19]

*** * * Withdrawal Dates of EDUC Record:**
AR at 5: WITHDRAWAL: 12/13/85
Rasca Decl. at Ex. F p. 4: 11/11/85
Rasca Decl./Ex. F p. 3/5: "Attendance Calculations" show last week more-than-half-time hours "recorded": 9/20/85
* * *

Between 1/8/01 Complaint and 3/19/01 Answer, counsel obtained extra-decision and non-agency "exhibits" from outside the record before the agency to "supplement" explaining the loan claim.

Fig. 4: Represented here, dispositive motion response (11/20/01) Enclosures 17 and 2, respectively, confirm Navarro Decl. Ex. A & Rasca Decl. Ex. 2/A—2/F *post hoc* to EDUC "decision" (*see also* Fig. 2)
* * *

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[17] ***(Claim)*** LDNER: 801178
[18] 01/23/01 Debt Level Information Screen* * *
"Originating Lender 801178 B OF A TRUSTEE C/O CMSC * * *
[19] ***(Note)*** O.E. Lender Code Number 828374 * * * FIRST INDEPENDENT TRUST

"[T]he declaration of Mr. Navarro has been supplemented to help explain the record," by *indirect loan transaction inferences* in an incomplete/self-conflicting "1[illegible] student record' for a newly-alleged, "Pell grant" of [illegible] agency record, produced by a recent employee ("oversaw" $85,000 of *Pell grant misapprpriations*) of a loan/grant originator (of millions in Federal funds annually).

Fig. 5: Applications *Predating* Pre-loan Note/ *Alleged* Disbursal Show Untrustworthiness of Source

* * * California Guaranteed Student Loan* * * FOR LENDER USE - LOAN IDENTIFICATION: _____ * * *

16. Do you have any outstanding student loan debts? No[20]

29. (A) FINANCIAL AID FOR LOAN PERIOD: -0- [21]

* * * *See* **Ex. 2-C,** alleged "Pell grant receipt for student" * * * $656.00 * * * receipted by *xBruce Edwads*[22]

Cf. The Student Room/Board 1984-85 Pell Grant MINIMUM: $1,000 by amended Revisions/Student Financial Assistance Technical Amendment Act of 1982 §4(a): Pub. L. 98-79 8/15/83 97 Stat 479

* * *

Filings *with* " the declaration of Mr. Navarro," allegedly "necessary" where "complex matters of a highly technical nature" need "help explain the record" (*Response* at p. 5, n

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[20] * * * 1st-time boarrowers (*see* [1982] 20 USC 1075(a)(1)(B), 1078(b)(1)(A)(ii) *and* [1984] 34 CFR 682.401(b)(3)(ii))—**prohibited wihout prior commercial-lender denial** * * *

[21] *cF.* 34 cfr 682.603 & 682.200 (1984 ed.), about school certification of loan application & "estimated financial assistance," respectively: * * * TTCI *falsified intent* & "Pell grant receipts

[22] ***Baselines shift between the tracings of names!***

2) of CSAC/Bank of America's 1987 loan/default *claim* for a 1985 First Independent Trust *note,* are inconsistent.

Fig. 6a: Rasca Decl/Exhibits compared to relevant assertions * * *
Fig. 6b: * * *

"The declaration of Mr. Navarro" is no more substantiated or reliable than the Rasca Declaration (*see also* Fig.'s 2, 3 & 5); judicial review of internal conflicts/absence of required documentation or any *independent* verification (EDUC "records" started on 5/23/93) will expose his pretences

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Fig. 7 Answer #14b at 3, and Navarro at 7, rely on FRCP 26(a)(1)(B)(B Ex. 1 CSAC "Contact History" (US000014)—that EDUC did not file in this case; its entries/contradictions are shown below: * * *

EDUC failed to identify a final written agency decision on the existence of the alleged debt IN RESPONSE TO MY FORMAL FILING FOR REVIEW OF THE CLAIM *required,* even if just on the submissions, written record, and other relevant evidence, under 34 CFR 30.33/30.24(e).

Fig. 8: Relevant Record on Formal Request for Review of the Claim/Existence of Debt

AR at 14 SAR at 270

*** * ***

Thus, the existence of alleged debt for the CSAC/Bank of America 1987 claim against a First Independent Trust 1985 not has/had no record to justify the agency decision,

due process was withheld by substituting offered review with requirement to admit to debt/request discharge of an existing loan instead, and the many violations of statute, code, law and authority raised in the Complaint are verifiable in the legitimate Administrative Record and Supplements thereto—which do not support defense counsel's assertions.

Incorporation both the 1/8/01 Complaint and the 7/31/02 Opening Brief, and without waiving any of the filings I have submitted during these proceedings, I request my right to the searching and careful reviwe under the most rigorous standard applicable, and all remedies available under the law, to be applied to my claims without regard to Defense post-suit extra record materials and rationalizations.

With appreciation to my wife for her resesarch and production through every step of this case, while I was engage in the business of supporting my family, respectfully submitted this 16th day of September, 2002.

s/Bruce Edwards

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Treasury Offset Program (TOP) information

Overview

(*From* http://fms.treas.gov/debt/top.html)

The Treasury Offset Program is a centralized offset program, administered by the Financial Management Service's (FMS) Debt Management Services (DMS), to collect delinquent debts owed to Federal agencies and states (including past-due child support), in accordance with 26 U.S.C. § 6402(d) (collection of debts owed to Federal agencies), 31 U.S.C. § 3720A (reduction of tax refund by amount of the debts), and other applicable laws. FMS disburses Federal payments, such as Federal tax refunds, for agencies making Federal payments (known as "payment agencies"), such as the Internal Revenue Service. "Creditor agencies," such as the Department of Education, submit delinquent debts to FMS for collection and inclusion in TOP and certify that such debts qualify for collection by offset.

Payment agencies prepare and certify payment vouchers to FMS and disbursing officials at other Federal agencies that are non-Treasury disbursed (such as the Department of Defense), who then disburse payments. The payment vouchers contain information about the payment including the name and Tax Identification Number (TIN) of the recipient. Before an eligible Federal payment is disbursed to a payee, disbursing officials compare the payment information with debtor information, which has been supplied by the creditor agency, in FMS' delinquent debtor database. If the payee's name and TIN match the name and TIN of a debtor, the disbursing official offsets the payment, in whole or in part, to satisfy the debt, to the extent legally allowed. The disbursing official is required to perform such offset pursuant to 31 U.S.C. § 3716(c).

FMS transmits amounts collected through offset to the appropriate creditor agencies. FMS maintains information about the delinquent debt in the TOP delinquent

debtor database and continues to offset eligible Federal payments until the creditor agency suspends or terminates debt collection or offset activity for the debt. A creditor agency will suspend collection if the debt is subject to a bankruptcy stay or if other reasons justify suspension. A creditor agency will terminate collection of a debt if it is paid in full, compromised, discharged, or if other reasons justify termination.

TOP Law (pertinent components)

(*From* http://fms.treas.gov/debt/regulations.html)

- Public Law 104-134
  Debt Collection Improvement Act of 1996
- Executive Order 13019 Supporting Families: Collecting Delinquent Child Support Obligations
- 5 U.S.C. 552a - Records maintained on individuals (Privacy Act)
- 26 U.S.C. 6103 - Confidentiality and disclosure of returns and return information; 6402 - Authority to make credits or refunds (tax refund offset)
- 31 U.S.C. 3701 - Definitions; 3711 - Collection and compromise; 3716 - Administrative offset; 3717 - Interest and penalty on claims; 3718 - Contracts for collection services; 3720A - Reduction of tax refund by amount of debt; 3720B - Barring delinquent federal debtors from obtaining federal loans or loan insurance guarantees; 3720D - Garnishment; 3720E - Dissemination of information regarding identity of delinquent debtors;
- 31 U.S.C. 7701 - Taxpayer identifying number
- 31 C.F.R. Part 285 *Subpart A - Disbursing Official Offset:* 285.2 - Offset of Tax Refund Payments to Collect Past-Due, Legally Enforceable Non-Tax Debt; 285.5 - Centralized Offset of Federal Payments to Collect Non-Tax Debts Owed to the United States *Subpart B - Authorities Other than Offset:* 285.11 - Administrative Wage Garnishment; 285.12 - Transfer of Debts to Treasury for Collection; 285.13 - Barring

Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees

- 31 C.F.R. 900-904 - Federal Claims Collection Standards
- OMB Circular No. A-129 - Issuance of Transmittal Memorandum Amending OMB Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables" [65 FR 71212-71225]